

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/601. Scope of the title.

PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))

1. INTRODUCTION

601. Scope of the title.

This title deals with the creation and formation of ports and harbours in England and Wales¹, as well as the law relating to their administration², management³ and development⁴ by harbour authorities⁵. It also deals with harbour conservancy⁶, the law relating to the safety of harbours⁷ and various provisions relating to the environmental protection of harbours⁸, and sets out the statutory framework for the privatisation of port undertakings under the Ports Act 1991⁹.

Maritime law¹⁰ and the law relating to fisheries¹¹ are dealt with elsewhere in this work.

1 le both at common law and under statute: see PARA 606 et seq post. As to the legislative framework of harbour law see PARA 602 post.

2 As to the administration of ports and harbours see PARA 603 et seq post.

3 As to the management and regulation of ports and harbours see PARA 686 et seq post.

4 As to harbour revision, empowerment and reorganisation see PARA 628 et seq post. As to the provision of harbour works and facilities see PARA 656 et seq post.

5 As to harbour authorities generally see PARA 619 et seq post. As to Associated British Ports see PARA 622 post; and as to the Port of London Authority see PARA 623 et seq post. This title does not deal in detail with other individual harbour authorities: their empowering legislation, being local in nature, is not set out in this work.

6 As to harbour conservancy see PARAS 696-697 post.

7 As to dangerous vessels see PARA 698 post; as to dangerous substances see PARA 699 et seq post. As to health and safety at work generally see HEALTH AND SAFETY AT WORK.

8 See PARAS 660, 664-665, 711 post. As to environmental protection generally see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH. As to pollution of harbours see PARA 710 post; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 348 et seq. As to the pollution of water generally see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 270 et seq.

9 See PARA 763 et seq post. As to the privatisation of the port of Tilbury see PARAS 627, 790 post.

10 See SHIPPING AND MARITIME LAW.

11 See AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 789 et seq.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/1. INTRODUCTION/602. Legislation relating to ports and harbours.

602. Legislation relating to ports and harbours.

Notwithstanding the Crown prerogative in the matters of erecting ports and granting charters¹, ports and harbours are now regulated almost entirely by statute and by delegated legislation, both general and local.

There are several Acts which deal with the administration, management and development of ports and harbours generally. The Harbours, Docks and Piers Clauses Act 1847 contains model clauses with regard to the construction, management and operation of harbours, docks and piers². Some provisions of the Act are archaic and are never now incorporated with new harbour legislation, but others remain important³. The Harbours and Passing Tolls etc Act 1861 authorised the making of loans to harbour authorities by the Public Works Loan Commissioners, abolished passing tolls and made provision as to dues⁴. The Harbours Transfer Act 1862 transferred certain functions relating to harbours and navigation from the Admiralty to the Board of Trade⁵. The Public Works and Fisheries Acts Amendment Act 1863 varied the statutory provisions relating to loans to harbour authorities by the Public Works Loan Commissioners⁶. The Harbours Act 1964 provides for the power to make harbour revision orders⁷, harbour empowerment orders⁸ and harbour re-organisation schemes⁹, for the reform of harbour charges including the right to object to dues¹⁰, for loans by the Secretary of State for the execution of harbour works¹¹ and for other matters¹². The Docks and Harbours Act 1966 empowers harbour authorities to provide inland clearance depots¹³, to acquire harbour businesses¹⁴, to carry out harbour operations¹⁵ and to acquire land by agreement¹⁶, and provides for other matters¹⁷. The Harbours (Loans) Act 1972 provides for loans by the Secretary of State to harbour authorities to pay certain debts¹⁸. The Ports (Financial Assistance) Act 1981 provided for financial assistance to the Port of London Authority and the Mersey Docks and Harbour Company¹⁹. The Transport Act 1981 provided for the transfer to a harbours company of the harbours of Sealink UK Limited, a subsidiary of the British Railways Board²⁰, for the British Transport Docks Board to be reconstituted as Associated British Ports²¹ and for the abolition of the National Ports Council²², and made a number of amendments to the Harbours Act 1964²³. The Ports (Reduction of Debt) Act 1983 made provision for reducing the indebtedness of the Port of London Authority and the Mersey Docks and Harbours Company²⁴. The Dangerous Vessels Act 1985 contains powers for a harbour master to give directions prohibiting the entry into, or requiring the removal from, a harbour of certain highly dangerous vessels²⁵. The Ports (Finance) Act 1985 repealed the provisions of the Harbours Act 1964 for the control of major harbour development²⁶ and contains provisions relating to the borrowing powers of harbour authorities²⁷ and the audit of their accounts²⁸. The Dangerous Substances in Harbour Areas Regulations 1987 regulate the entry of dangerous substances into, and their handling within, harbours²⁹. The Aviation and Maritime Security Act 1990 contains provisions for the protection of, inter alia, harbour areas against acts of violence³⁰. The Ports Act 1991 provides for the privatisation of the undertakings of relevant port authorities³¹ and of the Port of London Authority's undertaking at Tilbury³². The Transport and Works Act 1992 extends the powers of harbour authorities under the Docks and Harbours Act 1966 for the acquisition of businesses³³, amends the procedure for harbour revision and empowerment orders under the Harbours Act 1964³⁴ and makes other amendments to that Act³⁵. The Harbour Works (Environmental Impact Assessment) Regulations 1999 amend the procedure for making harbour revision and empowerment orders under the Harbours Act 1964 and provide for an environmental assessment of other proposed works where appropriate³⁶.

Some statutes of general application contain provisions relating specifically to administration, management and development of ports and harbours. These include the Customs and Excise Management Act 1979³⁷ and the Town and Country Planning Act 1990 and subordinate legislation under that Act³⁸.

The general legislation for safety of navigation and prevention of pollution in ports and harbours is described elsewhere in this work³⁹, although certain provisions, such as those relating to the powers of harbour authorities and their harbour masters under local legislation⁴⁰ for the regulation of shipping and the removal of wrecks and obstructions⁴¹, and powers under the Dangerous Vessels Act 1985⁴² and the Dangerous Substances in Harbour Areas Regulations

1987⁴³, are mentioned in this title. The most important statutes in these areas are the Merchant Shipping Act 1995 (which provides for, inter alia, the provision of lighthouses and other aids to navigation, the removal of wrecks and the prevention of pollution)⁴⁴ and the Pilotage Act 1987⁴⁵. Also important in this context are provisions of the Coast Protection Act 1949 for the control of works below high water mark in the interests of safe navigation⁴⁶, and provisions of the Food and Environment Protection Act 1985 for the control of dumping at sea⁴⁷.

The Dockyard Ports Regulation Act 1865 provides for the definition of the limits of dockyard ports and for their administration⁴⁸, and the Docks Regulations 1988 contain provisions for the safety of dock work⁴⁹.

The legislation concerning fisheries in relation to ports and harbours is dealt with elsewhere in this work⁵⁰.

1 As to the creation of ports at common law see PARA 606 et seq post. As to the effect of statutes on the royal prerogative see *A-G v De Keyser's Royal Hotel Ltd* [1920] AC 508, HL; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 367 et seq.

2 For the meaning of 'the harbour, dock or pier' in the Harbours, Docks and Piers Clauses Act 1847 see PARA 663 note 3 post.

The provisions of the Harbours, Docks and Piers Clauses Act 1847 apply only to such harbours, docks or piers as are authorised by: (1) a subsequent Act or delegated legislation which declares that the Harbours, Docks and Piers Clauses Act 1847 is to be incorporated with it (s 1); or (2) a provisional order made under the General Pier and Harbour Act 1861, which provided that such an order was to be deemed to incorporate the whole of the Harbours, Docks and Piers Clauses Act 1847 except in so far as the order provided to the contrary (General Pier and Harbour Act 1861 Amendment Act 1862 s 19 (repealed)).

Note that in the Harbours, Docks and Piers Clauses Act 1847 s 1, the subsequent Act is referred to as 'the special Act', which means any Act passed after the Harbours, Docks and Piers Clauses Act 1847 authorising the construction or improving of a harbour, dock or pier and with which the Harbours, Docks and Piers Clauses Act 1847 is incorporated: s 2. However, an Act, harbour revision order (as to which see PARAS 628-643 post), harbour empowerment order (as to which see PARAS 645-647 post) or harbour reorganisation scheme (as to which see PARAS 648-653 post) which incorporates provisions of the Harbours, Docks and Piers Clauses Act 1847 usually provides that that Act, order or scheme is deemed to be the special Act for the purposes of the incorporated provisions.

Where provisions of the Harbours, Docks and Piers Clauses Act 1847 are incorporated with a later Act, the clauses of the Harbours, Docks and Piers Clauses Act 1847 (save so far as expressly varied or excepted by the later Act) are to apply to that Act and are to form part of that Act and be construed therewith as forming one Act: s 1. The persons authorised by the special Act or delegated legislation to construct the harbour, dock or pier or otherwise carry into effect the purposes of that Act or subordinate legislation with reference thereto are referred to in the Harbours, Docks and Piers Clauses Act 1847 as 'the undertakers' (see s 2), and will also be a harbour authority within the meaning of the Harbours Act 1964 (see PARA 619 post). An Act, order or scheme which incorporates provisions of the Harbours, Docks and Piers Clauses Act 1847 generally provides that the harbour authority to which the Act, order or scheme relates is deemed to be 'the undertaker' for the purposes of the incorporated provisions. Nothing in the special Act is to be deemed to exempt the undertakers from the provisions, regulations and conditions contained in any general Act relating to harbours, docks or piers, or to ports, harbours, or tidal waters, which may be passed in the same session as the special Act or any later session of Parliament: Harbours, Docks and Piers Clauses Act 1847 s 103. There are savings for the rights of the Crown (see s 99), government departments (see s 100), the City of London (see s 101), and Trinity House of Deptford Strond and other bodies (see s 102).

3 See eg the Harbours, Docks and Piers Clauses Act 1847 s 33; and PARA 616 post.

4 The Harbours and Passing Tolls etc Act 1861 (see PARA 680 post) now only applies to harbour authorities for fishery harbours. As to fishery harbours see PARA 612 post.

5 As to the subsequent devolution of functions to the Secretary of State see PARA 603 post.

6 As to the Public Works and Fisheries Acts Amendment Act 1863 see PARA 680 post.

7 As to harbour revision orders see PARAS 628-643 post.

8 As to harbour empowerment orders see PARAS 645-647 post.

- 9 As to harbour reorganisation schemes see PARAS 648-653 post.
- 10 As to harbour charges and the right to object to dues see PARA 666 et seq post.
- 11 As to loans see PARA 679 et seq post.
- 12 See PARA 679 et seq post. The Harbours Act 1964 does not extend to Northern Ireland: s 63(2) (amended by the Northern Ireland Constitution Act 1973 s 41(1), Sch 6 Pt I; and the House of Commons Disqualification Act 1975 s 10(2), Sch 3). Any reference in the Harbours Act 1964 to any other Act is to be construed as a reference to that enactment as amended by any other Act: s 57(5).
- 13 As to the power to provide inland clearance depots see PARA 743 post.
- 14 As to the power to acquire harbour businesses see PARA 744 post.
- 15 As to the power to carry out harbour operations see PARA 742 post.
- 16 As to the power to acquire land by agreement see PARA 741 post.
- 17 The Docks and Harbours Act 1966 Pt III (ss 36-50) (as amended) and the Harbours Act 1964 have effect as if the Docks and Harbours Act 1966 Pt III (as amended) were part of the Harbours Act 1964: Docks and Harbours Act 1966 s 50(1). The powers conferred by Pt III (as amended) on harbour authorities are in addition to, and do not derogate from, any powers conferred on harbour authorities otherwise than by Pt III (as amended): s 50(2). The Docks and Harbours Act 1966 does not extend to Northern Ireland: s 60(5).
- 18 References in the Harbours (Loans) Act 1972 to any provision of the Harbours Act 1964 are to be construed, except where the context otherwise requires, as references to that provision as amended, extended or applied by or under any other enactment, including an enactment contained in the Harbours (Loans) Act 1972: s 5(2). The Harbours (Loans) Act 1972 does not extend to Northern Ireland: s 5(4).
- 19 See the Ports (Financial Assistance) Act 1981 s 1 (amended by the Ports (Finance) Act 1985 s 2).
- 20 See the Transport Act 1981 ss 2, 4 (repealed). The British Railways Board disposed of its securities in Sealink Harbours Ltd, and the harbours in question have now been transferred by harbour revision orders to other companies which are now the harbour authorities for these harbours.
- 21 See *ibid* Pt II (ss 5-14) (as amended). As to Associated British Ports see PARA 622 post.
- 22 See *ibid* Pt III (ss 15-18), Sch 5 (ss 15, 16, Sch 5 amended by the Statute Law (Repeals) Act 2004). The National Ports Council had been established by the Harbours Act 1964 ss 1-8 (repealed). Its functions determined and its property, rights and liabilities and obligations vested in the Secretary of State on 1 October 1981 (see the Transport Act 1981 Sch 5 Pt I (as amended); and the Transport Act 1981 (Dissolution of National Ports Council) (Appointed Day) Order 1981, SI 1981/1364) and it ceased to exist on 1 December 1981 (see the Transport Act 1981 (Dissolution of National Ports Council) (Final) Order 1981, SI 1981/1665).
- 23 See the Transport Act 1981 s 18, Sch 6.
- 24 See the Ports (Reduction of Debt) Act 1983 ss 1, 2.
- 25 As to the Dangerous Vessels Act 1985 see PARA 698 post.
- 26 See the Ports (Finance) Act 1985 s 6, Schedule.
- 27 See *ibid* ss 3, 5.
- 28 See *ibid* ss 4, 5 (s 4 amended by the Companies Act 1989 (Eligibility for Appointment as Company Auditor) (Consequential Amendments) Regulations 1991, SI 1991/1997, reg 2, Schedule para 54).
- 29 The Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37 (as amended) were made under powers contained in the Health and Safety at Work etc Act 1974 and the Explosives Act 1875. As to these regulations see PARAS 700-709 post; and HEALTH AND SAFETY AT WORK.
- 30 As to the relevant provisions of the Aviation and Maritime Security Act 1990 see PARAS 712-738 post. As to the Secretary of State's power to make directions in relation to harbour authorities in the interests of national defence see the Transport Act 1982 s 66 (not yet in force); and PARA 739 post. The Ship and Port Facility (Security) Regulations 2004, SI 2004/1495, also contain measures aimed at enhancing ship and port facility security: see SHIPPING AND MARITIME LAW vol 94 (2008) PARAS 708-714, 1193-1194. The Terrorism Act 2000 s 53

and Sch 7 contain provisions relating to port and border controls: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 430 et seq.

31 As to the provisions enabling the privatisation of such port authorities see PARA 763 et seq post.

32 See the Ports Act 1991 Pt II (ss 21-30) (as amended); and PARAS 627, 790 post.

33 See PARA 744 post.

34 See PARAS 628 et seq post.

35 By repealing the Harbours Act 1964 s 62, the Transport and Works Act 1992 abolished the power to promote private Bills to achieve purposes which could be achieved by harbour revision or empowerment orders or harbour reorganisation schemes; it also repealed certain obsolete harbour statutes including the General Pier and Harbour Act 1861 and the General Pier and Harbour Act 1861 Amendment Act 1862: see the Transport and Works Act 1992 s 68, Sch 4 Pt II.

36 As to the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, see PARA 664 post.

37 As to the powers conferred on the Commissioners for Revenue and Customs by the Customs Management Act 1979 to appoint an area as a port for customs purposes see PARA 609 post.

38 As to the deemed granting of planning permission for development specifically authorised by certain Acts and orders and for certain works on operational land of statutory harbour undertakings see PARA 661 post.

39 See ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 347 et seq; WATER AND WATERWAYS.

40 Legislation of local application only is not set out in this work.

41 See PARA 696 post.

42 See PARA 698 post.

43 Ie the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37: see PARAS 700-709 post.

44 See eg para 710 post; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 347 et seq.

45 See SHIPPING AND MARITIME LAW vol 93 (2008) PARA 562 et seq.

46 See PARA 659 post.

47 See PARA 660 post.

48 As to the Dockyard Ports Regulation Act 1865 see PARAS 689, 693 post.

49 The Docks Regulations 1988, SI 1988/1655, were made under the Health and Safety at Work etc Act 1974: see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 706.

50 See generally AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 789 et seq.

UPDATE

602 Legislation relating to ports and harbours

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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2. ADMINISTRATION

603. The Secretary of State.

Most of the powers and duties conferred or imposed by statute on government ministers in relation to ports and harbours in England and Wales are vested in the Secretary of State¹. The entrusting to a particular Secretary of State of statutory functions vested simply in 'the Secretary of State' is an administrative matter and may be effected without the authority of a legislative instrument². Functions vested in the Secretary of State by statutory provisions expounded in this title should, unless otherwise indicated, be understood as having been entrusted to, and accordingly as being in practice exercisable by, the Secretary of State for Transport³.

The devolution to the Secretary of State of functions in relation to ports and harbours may be traced from 1919 when, with certain exceptions⁴, all the powers and duties of government departments in relation to harbours, docks and piers were transferred, with other powers and duties, to the newly created Minister of Transport⁵. In 1939 all functions exercisable by the Board of Trade⁶ in relation to ships or vessels, navigation (including pilotage), wreck, salvage, harbours, docks, piers and conservancy and foreshore, tidal land and coast protection were transferred, with other functions of the Board, to the Minister of Shipping⁷. In 1941 all functions exercisable by the Minister of Transport and the Minister of Shipping were transferred to the Minister of War Transport⁸, and in 1946 the functions then exercisable by the Minister of War Transport were transferred to the Minister of Transport⁹. In 1965 functions of the Minister of Transport relating to works on the foreshore¹⁰, shipping and navigation were transferred, with other functions, to the Board of Trade¹¹. In 1970 the Ministry of Transport was dissolved and, with a few exceptions¹², all the functions of the Minister of Transport were transferred to the Secretary of State¹³. In 1976 the transport functions of the Secretary of State¹⁴ were entrusted to the Secretary of State for Transport¹⁵, and certain transport functions of the Secretary of State for the Environment were transferred to the Secretary of State for Transport¹⁶. In 1979 the functions of the Secretary of State for Transport, and the functions of the Secretary of State which previously had been entrusted to the Secretary of State for Transport, were transferred to the Minister of Transport¹⁷. In 1981 the functions of the Minister of Transport were, with certain exceptions¹⁸, transferred to the Secretary of State¹⁹.

The functions of the Minister of Transport which had in 1965 been transferred to the Board of Trade²⁰ were in 1970 transferred together with all other functions of the Board to the Secretary of State so as to be exercisable concurrently with the Board²¹. In 1983 the civil aviation and shipping functions²² of the Board which were exercisable concurrently with any Minister of the Crown ceased to be exercisable by the Board of Trade²³. Such functions accordingly became exercisable by the Secretary of State alone²⁴.

Certain powers and duties of government under statutory provisions relating to ports and harbours²⁵ were vested in the Minister of Agriculture, Fisheries and Food²⁶. These powers are now exercised by the Secretary of State²⁷ or by the Secretary of State for Environment, Food and Rural Affairs²⁸.

1 In any enactment, 'Secretary of State' means one of Her Majesty's principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1. As to the office of Secretary of State see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 355. For functions vested in the Welsh Ministers see PARA 604 post.

2 See, for example, references to the prior entrusting of functions to particular Secretaries of State in the Transfer of Functions (Trade and Industry) Order 1983, SI 1983/1127, art 1(2)(a); and the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971, art 6(2)(b), (3).

3 As to the Department of Transport see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 509 et seq.

4 The exceptions relevant to this title were powers and duties of the Board of Trade relating to navigation under the Harbours Transfer Act 1862 and any local, special or private Act: see the Ministry of Transport (Board of Trade Exception of Powers) Order 1919, SR & O 1919/1440, art 3, Schedule (revoked). Certain powers and duties previously exercisable by the Admiralty in relation to harbours had been transferred to the Board of Trade by the Harbours Transfer Act 1862: see ss 5, 8, 9.

5 See the Ministry of Transport Act 1919 s 2 (repealed).

6 See note 4 supra. As to the Board of Trade see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 505.

7 See the Minister of Shipping (Transfer of Functions) Order 1939, SR & O 1939/1470, art 1.

8 See the Ministers of the Crown (Minister of War Transport) Order 1941, SR & O 1941/654, art 2.

9 See the Ministry of War Transport (Dissolution) Order 1946, SR & O 1946/375, art 2(1). In 1953 the title of the Minister of Transport was changed to the Minister of Transport and Civil Aviation (see the Transfer of Functions (Ministry of Civil Aviation) Order 1953, SI 1953/1204, art 3(1)), and in 1959 it was changed back to the Minister of Transport (see the Minister of Aviation Order 1959, SI 1959/1768).

10 The functions relating to works which were transferred to the Board of Trade included in particular those under the Harbours, Docks and Piers Clauses Act 1847 s 12 (as amended) and s 13: see PARA 662 post.

11 See the Transfer of Functions (Shipping and Construction of Ships) Order 1965, SI 1965/145, art 2, Sch 1.

12 See the functions described in the Secretary of State for the Environment Order 1970, SI 1970/1681, art 2(1), Sch 1. These functions, which are not relevant to this title, were transferred to the Secretary of State for the Environment: see art 2(1).

13 See *ibid* art 2(1). The transferred functions, together with those of the ministers of two other dissolved ministries (the Ministry of Housing and Local Government and the Ministry of Public Building and Works) were, in practice, exercisable by the Secretary of State for the Environment assisted, in the case of transport functions, by the Minister of Transport Industries.

14 For these purposes, 'transport functions of the Secretary of State' means, so far as relevant to this title, such functions of the Secretary of State relating to ports, docks and harbours as: (1) were exercisable before 10 April 1976 by the Secretary of State for the Environment; and (2) had been entrusted, before the making of the Secretary of State for Transport Order 1976, SI 1976/1775 (as amended), to the Secretary of State for Transport: art 1(3).

15 See *ibid* art 1(3)(b).

16 See *ibid* art 2(1)-(3).

17 See the Minister of Transport Order 1979, SI 1979/571, art 2(1).

18 *Ie*, so far as relevant to this title, all functions of the Minister of Transport which, immediately before the coming into operation of the Minister of Transport Order 1979, SI 1979/571, were by virtue of the Secretary of State for Transport Order 1976, SI 1976/1775, art 2 (see the text and note 16 supra) exercisable by that Secretary of State: see the Transfer of Functions (Transport) Order 1981, SI 1981/238, art 2(1)(a). These functions were transferred to the Secretary of State for Transport: art 2(1)(a).

19 See *ibid* art 2(2).

20 See the text and notes 10-11 supra. In 1968 the functions of the Board of Trade became exercisable also by the President of the Board: see the Industrial Expansion Act 1968 s 14(1) (repealed).

21 See the Secretary of State for Trade and Industry Order 1970, SI 1970/1537, art 2(1)(a). At the same time all the functions of the President of the Board of Trade (other than the President's functions in the Board or any power to act for the Board) were transferred to the Secretary of State so as to be exercisable concurrently with the President: art 2(1)(b). The functions of the Secretary of State were entrusted to the Secretary of State for Trade and Industry and, with the establishment of new departments in place of the Department of Trade and Industry (see the Secretary of State (New Departments) Order 1974, SI 1974/692), to the Secretary of State for Trade. Some functions of the Secretary of State for Trade and Industry (none of which is related to ports and

harbours in England and Wales) were transferred to the Secretary of State for Trade: see art 2(1), Schedule 1 Pt III. Some functions of the Secretary of State for Trade and Industry under any local Act passed before the making of the Secretary of State (New Departments) Order 1974, SI 1974/692, were transferred to the Secretary of State for Trade: art 2(2). In 1983, the Department of Trade and the Department of Industry were again amalgamated: see the Transfer of Functions (Trade and Industry) Order 1983, SI 1983/1127.

22 For these purposes, 'civil aviation and shipping functions' means functions relating to civil aviation, merchant shipping or hovercraft, including any functions relating to harbours, docks, tidal waters, lighthouses or the coastguard service but does not include any wireless telegraphy functions: *ibid* art 1(2)(a).

23 *Ibid* art 2(4).

24 Civil aviation and shipping functions were entrusted to the Secretary of State for Transport (see *ibid* art 1(2)(a)) or were transferred to him (see art 2(3)).

25 In particular: (1) the powers under the Sea Fish Industry Act 1951 s 21 (as amended), including that of determining, with the Secretary of State, whether a harbour is principally used by the fishing industry (see PARA 612 post); (2) the power under the Fisheries Act 1955 s 2 (as amended) to give financial assistance for the execution, for the benefit of the fishing industry, of harbour and other works (see PARA 683 post); (3) the functions under the Harbours Act 1964 s 14 (as amended) in relation to applications for harbour revision orders for fishery harbours (see PARA 628 et seq post), and the power of the minister under s 15 (as amended) to make of his own motion such orders for such harbours (see PARA 631 post); (4) the functions under s 15A (as added) (see PARA 644 post); (5) the functions under s 16 (as amended) in relation to applications for harbour empowerment orders for fishery harbours (see PARA 645 post); (6) the function under s 30(4) (as amended) of receiving copies of the lists of certain charges kept by harbour authorities at fishery harbours (see PARA 670 post); (7) the functions under s 31 (as amended) in relation to objections made to certain charges imposed by harbour authorities at fishery harbours (see PARA 671 post); (8) the power under s 60 to amend provisions relating to fishery harbours contained in Acts of local application (see PARA 654 post); and (9) the licensing and enforcement functions under the Food and Environment Protection Act 1985 Pt II (ss 5-15) (as amended) in relation to the depositing of substances or articles in the sea (see PARA 660 post). As to the transfer of these functions in relation to Wales see PARA 604 post.

26 This position, at that time known as the Minister of Agriculture and Fisheries, was created in 1919 when all the functions of the Board of Agriculture and Fisheries, which included powers relating to fishery harbours (see the Fishery Harbours Act 1951 s 1 (repealed)), were transferred to him: see the Ministry of Agriculture and Fisheries Act 1919 s 1 (as amended); and AGRICULTURAL LAND vol 1 (2008) PARA 643. The powers relating to fishery harbours which were powers of making orders under the General Pier and Harbour Act 1861 had been transferred from the Board of Trade to the Board of Agriculture and Fisheries by the Fisheries Act 1915: see s 2 (repealed). The Minister of Agriculture and Fisheries was renamed the Minister of Agriculture, Fisheries and Food in 1955: see the Transfer of Functions (Ministry of Food) Order 1955, SI 1955/554, art 3(1). The Ministry of Agriculture, Fisheries and Food has now been dissolved: see the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794.

27 The Secretary of State now exercises the powers under the Sea Fish Industry Act 1951 s 21 (as amended), the Harbours Act 1964, the Ports Act 1991 Pt I (ss 1-20) (as amended) (see PARA 763 et seq post), and the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445 (see PARA 664 post): see the Transfer of Functions (Fishery Harbours) Order 2001, SI 2001/3503, art 2(1).

28 See the Secretaries of State for Transport, Local Government and the Regions and for Environment, Food and Rural Affairs Order 2001, SI 2001/2568.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/2. ADMINISTRATION/604. The Welsh Ministers.

604. The Welsh Ministers.

Certain functions of government under statutory provisions relating to ports and harbours¹, so far as exercisable in relation to Wales², are now exercisable by the Welsh Ministers³.

Most of the functions⁴ were originally functions of the Minister of Agriculture, Fisheries and Food⁵. On 1 April 1969 the functions of that minister which were exercisable by statutory instrument in relation to England and Wales under certain enactments⁶ were transferred to the minister and the Secretary of State⁷ jointly⁸, together with, in relation to Wales, any other

functions of the minister under those enactments or under an instrument⁹ having effect under any of those enactments¹⁰. On 1 April 1978, the functions of the Minister of Agriculture, Fisheries and Food under those enactments which were exercisable by him jointly with the Secretary of State in relation to Wales or to England and Wales were transferred to the minister so far as exercisable in relation to England, and to the Secretary of State so far as exercisable in relation to Wales¹¹. In addition, other functions of the minister under specified enactments¹², so far as exercisable in relation to Wales, were transferred to the Secretary of State¹³. On 1 July 1999 all the functions in question were transferred to the National Assembly for Wales¹⁴, and these functions have now been transferred to the Welsh Ministers¹⁵.

1 le: (1) the functions under the Sea Fish Industry Act 1951 transferred to the Secretary of State by the Transfer of Functions (Wales) (No 1) Order 1978, SI 1978/272 (see the text and note 12 head (1) *infra*); (2) the functions under the Fisheries Act 1955 (see PARA 683 *post*); (3) the functions under the Harbours Act 1964 s 14 (as amended) (see PARA 628 *et seq post*) so far as it relates to fishery harbours; (4) the functions under s 15 (as amended) (see PARA 631 *post*), so far as it relates to fishery harbours; (5) the functions under s 15A (as added) (see PARA 644 *post*), so far as it relates to fishery harbours; (6) the functions under s 16 (as amended) (see PARAS 645-646 *post*), so far as it relates to fishery harbours; (7) the function under s 30 (as amended) (see PARA 670 *post*), so far as it relates to fishery harbours; (8) the functions under s 31 (as amended) (see PARA 671 *post*), so far as it relates to fishery harbours; (9) the functions under s 60 (see PARA 654 *post*), so far as it relates to fishery harbours; (10) the functions under Sch 3 (as amended) (see PARAS 632 *et seq*, 647 *post*), so far as it relates to fishery harbours; and (11) the functions under the Food and Environment Protection Act 1985 Pt II (ss 5-15) (as amended) (see PARA 660 *post*): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended); and the text and note 14 *infra*. For the meaning of 'fishery harbour' see PARA 612 *post*.

2 For the meaning of 'Wales' see PARA 613 note 1 *post*.

3 See the Government of Wales Act 2006 s 162(1), Sch 11 para 30; and the text and note 15 *infra*. 'The Welsh Ministers' means the First Minister and the Welsh Ministers appointed under s 48: see s 45(2). As to the First Minister and the Welsh Ministers see the Government of Wales Act 2006 ss 46-48; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

4 See note 1 *supra*.

5 As to the dissolution of the Ministry of Agriculture, Fisheries and Food see PARA 603 *ante*.

6 The enactments included:

- 1 (1) the Fisheries Act 1955 s 2;
- 2 (2) the Harbours Act 1964 s 14 (as amended);
- 3 (3) the Harbours Act 1964 ss 15, 16, 31 (all as amended); and
- 4 (4) any local enactment referring to the confirmation of byelaws made under the Harbours, Docks and Piers Clauses Act 1847 or under any Act incorporating it in whole or in part.

7 As to the particular Secretary of State by whom the functions were to be discharged see note 8 *infra*.

8 See the Transfer of Functions (Wales) Order 1969, SI 1969/388, art 3(1), Sch 2 Pt II para 5. The discharge of any functions as functions exercisable by virtue of art 3(1) by the Secretary of State was to belong to the Secretary of State for Wales: art 3(2). However, this was to be without prejudice to the responsibilities of any other Secretary of State for functions previously shared jointly by the Minister of Agriculture, Fisheries and Food and the Secretary of State or for functions with which a Secretary of State is otherwise concerned: art 3(2).

9 le under any scheme, regulations, rules, order, byelaws or similar instrument.

10 See the Transfer of Functions (Wales) Order 1969, SI 1969/388, art 3(1), Sch 2 Pt II para 5.

11 See the Transfer of Functions (Wales) (No 1) Order 1978, SI 1978/272, art 2(2), Sch 1. The functions transferred to the Secretary of State were (and, so far as not transferred to the National Assembly for Wales and then the Welsh Ministers, are) in practice exercisable by the Secretary of State for Wales. Of the functions transferred to the Secretary of State all have been transferred from him to the Welsh Ministers except those mentioned in note 6 head (4) *supra*.

12 The specified enactments included:

- 5 (1) the Sea Fish Industry Act 1951 s 21(1) (as amended);
- 6 (2) the Harbours Act 1964 s 30 (as amended), s 60, Sch 3 (as amended); and
- 7 (3) the Dumping at Sea Act 1974 (except ss 1(7), 6, 12(3) (whole Act repealed and replaced by the Food and Environment Protection Act 1985 Pt II (ss 5-15) (as amended), except ss 9(3), 12).

13 See the Transfer of Functions (Wales) (No 1) Order 1978, SI 1978/272, art 2(1), Sch 1.

14 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (amended by SI 2000/253).

15 See the Government of Wales Act 2006 s 162(1), Sch 11 para 30; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. The Government of Wales Act 2006 changes the structure of devolved government in Wales, providing for the formal separation of the executive and legislative branches: see Pt 2 (ss 45-92); and CONSTITUTIONAL LAW AND HUMAN RIGHTS. Functions formerly vested in the National Assembly for Wales are transferred, subject to certain exceptions not relevant to this title, to the Welsh Ministers: see note 3 *supra*; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/2. ADMINISTRATION/605. Power of Secretary of State to obtain information and forecasts.

605. Power of Secretary of State to obtain information and forecasts.

The Secretary of State¹ may, for the purpose of obtaining information and forecasts reasonably required by him for the exercise and performance of his functions²:

- 1 (1) by notice in writing³ served on a person⁴ engaged in improving, maintaining or managing a harbour⁵, require him to furnish to the Secretary of State such information or forecasts as may be specified in the notice⁶; and
- 2 (2) by notice in writing served on a person⁷ carrying out at a harbour harbour operations⁸ of a particular description, require him to furnish to the Secretary of State such information, or forecasts relating to harbour operations of that description carried out by him at that harbour, as may be so specified⁹.

Any such notice may require the information or forecasts to be furnished in such manner and within such time as may be specified in the notice, and either periodically or on one occasion or more¹⁰.

A person who fails to satisfy an obligation to which he is subject by virtue of such a notice¹¹ is, unless he proves¹² that he had a reasonable excuse for the failure, guilty of an offence¹³. A person who, in purported compliance with a requirement¹⁴, gives any information which he knows to be false in a material particular or makes a statement which he knows to be so false or recklessly gives any information which is so false or recklessly makes any statement which is so false is guilty of an offence¹⁵.

Subject to certain exceptions¹⁶, no person may disclose any information furnished to him in pursuance of a requirement¹⁷ imposed on him¹⁸ and, subject to like exceptions¹⁹, no person may disclose anything contained in a forecast furnished to him in pursuance of such a requirement²⁰. A person who makes a disclosure in contravention of these restrictions²¹ is guilty of an offence²².

1 As to the Secretary of State see PARA 603 note 1 *ante*.

2 I.e. his functions under the Harbours Act 1964, examples of which include: his functions in relation to harbour revision orders (see PARAS 628-643 *post*), empowerment orders (see PARAS 645-647 *post*) and ship,

passenger and goods dues (see PARA 671 post). 'Functions', unless the context otherwise requires, includes powers and duties: Harbours Act 1964 s 57(1). The power to obtain information and forecasts under the Harbours Act 1964 s 41 (as amended) also applies in relation to the functions of the Secretary of State under the Harbours (Loans) Act 1972: see s 2 (amended by the Transport Act 1981 s 15(2), Sch 5 para 11). As to the Harbours (Loans) Act 1972 see PARAS 681-682 post.

3 'Writing' includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form; and expressions referring to writing are to be construed accordingly: Interpretation Act 1978 s 5, Sch 1. As to the service of notices see PARA 761 post.

4 'Person' includes a body of persons corporate or unincorporate: Interpretation Act 1978 s 5, Sch 1. As to bodies corporate and unincorporate see COMPANIES; CORPORATIONS.

5 For the meaning of 'harbour' see PARA 611 post. References in the Harbours Act 1964 to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties are to be construed as references to a harbour which is being improved, maintained or managed by such an authority in the exercise of statutory powers, in the performance of statutory duties or in the exercise and performance of statutory powers and statutory duties; and cognate references are to be construed similarly: s 57(2). As the provision in the text refers simply to a person engaged in improving, maintaining or managing a harbour (and not to that person's being a harbour authority or to the improvement, maintenance or management being in the exercise and performance of statutory powers and duties), it appears that that reference includes a person so engaged otherwise than under statutory powers as well as a harbour authority within the meaning of the Harbours Act 1964. As to harbour authorities see PARA 619 et seq post.

'Statutory powers' and 'statutory duties' means, in relation to a harbour authority, unless the context otherwise requires, powers or duties vested in it under the Harbours Act 1964, by another Act, or by an order or other instrument (except a provisional order) made under another Act or by a provisional order, other than river works powers or duties: s 57(1). 'River works powers' includes powers which are conferred by the Water Resources Act 1991 s 4 (repealed) or s 165 (as amended), or by or under Pt VII (ss 154-186) (as amended) or the Water Industry Act 1991 Pt VI (ss 155-192) (as amended) and to any powers conferred by the Land Drainage Act 1991 s 14 (as amended) (see WATER AND WATERWAYS vol 101 (2009) PARAS 587, 589); Water Consolidation (Consequential Provisions) Act 1991 s 2, Sch 1 para 13; and see the Harbours Act 1964 s 57(1) (definition amended by the Water Act 1989 s 190(3), Sch 27 Pt I). 'River works duties' means duties imposed by an Act to do things of the kinds authorised to be done in exercise of river works powers: Harbours Act 1964 s 57(1). For the meaning of 'Act' see PARA 628 note 26 post.

6 Ibid s 41(1)(a) (s 41(1) amended by the Transport Act 1981 s 15(2), Sch 5 para 11).

7 For these purposes, 'person' does not include the person engaged in improving, maintaining or managing the harbour: Harbours Act 1964 s 41(1)(b).

8 Except where the context otherwise requires, 'harbour operations' means: (1) the marking or lighting of a harbour or any part of it; (2) the berthing or dry docking of a ship; (3) the warehousing, sorting, weighing or handling of goods on harbour land or at a wharf; (4) the movement of goods or passengers within the limits within which the person engaged in improving, maintaining or managing a harbour has jurisdiction or on harbour land; (5) in relation to a harbour (which does not here include a wharf): (a) the towing or moving of a ship which is in or is about to enter or has recently left the harbour; (b) the loading or unloading of goods, or the embarking or disembarking of passengers, in or from a ship which is in the harbour or its approaches; (c) the lighterage or handling of goods in the harbour; and (6) in relation to a wharf: (a) the towing or moving of a ship to or from the wharf; (b) the loading or unloading of goods or the embarking or disembarking of passengers at the wharf in or from a ship: ibid s 57(1). For the meaning of 'ship' see PARA 611 note 2 post; for the meaning of 'goods' see PARA 611 note 5 post; and for the meaning of 'wharf' see PARA 611 post. 'Harbour land' means land adjacent to a harbour and occupied wholly or mainly for the purposes of activities there carried on: s 57(1). 'Land' includes land covered by water: s 57(1).

9 Ibid s 41(1)(b) (as amended: see note 6 supra).

10 Ibid s 41(1) (as amended: see note 6 supra). No notice may be served under s 41(1) (as amended) requiring a person to furnish information or forecasts concerning anything done or to be done at a fishery harbour: s 41(4). For the meaning of 'fishery harbour' see PARA 612 post. A notice served under s 41(1) (as amended) on a person requiring him to furnish any information or forecasts concerning anything done or to be done at a harbour is, if the harbour becomes a fishery harbour, thereupon to cease to have effect except in so far as it requires any information or forecast to be furnished before the date on which the harbour becomes a fishery harbour: s 41(4).

11 It is an obligation to which he is subject by virtue of ibid s 41(1) (as amended): see the text to notes 1-10 supra.

12 As to the standard of proof required of the accused see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1370-1371.

13 Harbours Act 1964 s 41(3). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale: s 41(3) (amended by virtue of the Criminal Justice Act 1982 s 46). As to offences by corporations under the Harbours Act 1964 see PARA 757 post.

'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164 (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

14 Ie a requirement imposed under the Harbours Act 1964 s 41 (as amended): see the text to notes 1-10 *supra*.

15 *Ibid* s 45 (amended by the Transport Act 1981 s 40(1), Sch 12; and by the Ports (Finance) Act 1985 s 6(2), Schedule). Any person guilty of such an offence is liable: (1) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding the prescribed sum, or to both; and (2) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both: Harbours Act 1964 s 45(i), (ii) (s 45(i) amended by virtue of the Magistrates' Courts Act 1980 s 32(2); and by the Transport Act 1981 s 18(1), Sch 6 para 15(1)).

The 'prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1) (as substituted): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 141.

16 The exceptions are information disclosed: (1) with the consent of the person by whom it was furnished or, as the case may be, carrying on the undertaking to which related the books, records or other documents from which it was obtained (Harbours Act 1964 s 46(1)(a)); or (2) in the form of a summary of information so furnished by, or so obtained from documents relating to undertakings carried on by, a number of persons, being a summary so framed as not to enable particulars relating to the business of individual persons to be ascertained therefrom (s 46(1)(b)); or (3) for the purpose of enabling the Secretary of State for Transport to discharge his functions under the Harbours Act 1964 (s 46(1)(c) (amended by the Transport Act 1981 Sch 12)); or (4) for the purposes of any legal proceedings (including arbitrations) or for the purposes of a report of any such proceedings as aforesaid (Harbours Act 1964 ss 46(1)(d), 57(1)). As to the devolution of functions to the Secretary of State for Transport see PARA 603 *ante*.

17 Ie a requirement imposed under the Harbours Act 1964 s 41 (as amended): see the text to notes 1-10 *supra*.

18 *Ibid* s 46(1) (amended by the Transport Act 1981 Sch 12; and the Ports (Finance) Act 1985 s 6(2), Schedule). This provision applies also in relation to information furnished in pursuance of a requirement imposed by virtue of the Harbours (Loans) Act 1972 s 2 (as amended): s 2 (as amended: see note 2 *supra*). As to the extension of the provisions of the Harbours Act 1964 s 46(1) (as amended) relating to the disclosure of information see the Anti-terrorism, Crime and Security Act 2001 s 17, Sch 4 para 2; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 395.

19 The exceptions are anything disclosed with the consent of the person by whom the forecast was furnished, or in the form of a summary of forecasts so furnished by a number of persons framed as mentioned in the Harbours Act 1964 s 46(1)(b) (see note 16 head (2) *supra*), or for such a purpose as is mentioned in s 46(1)(c) (as amended) (see note 16 head (3) *supra*), or for such purposes as are mentioned in s 46(1)(d) (see note 16 head (4) *supra*): s 46(1).

20 *Ibid* s 46(1).

21 Ie in contravention of *ibid* s 46 (as amended).

22 *Ibid* s 46(2). A person guilty of such an offence is liable: (1) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding the prescribed sum, or to both; (2) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both: s 46(2)(a), (b) (s 46(2) (a) amended by the Magistrates Courts Act 1980 s 32(2); and the Transport Act 1981 Sch 6 para 15(1)).

UPDATE

605 Power of Secretary of State to obtain information and forecasts

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/3. CREATION, FORMATION AND USE OF PORTS AND HARBOURS/606. Creation of ports.

3. CREATION, FORMATION AND USE OF PORTS AND HARBOURS

606. Creation of ports.

At common law the Crown, by virtue of the prerogative, enjoyed the exclusive right of erecting ports and harbours and assigning their limits¹. Ports might be created by proclamation where the ownership remained with the Crown², or might be granted to a subject by charter as a liberty or franchise³, or claimed by prescription with the right to take tolls and dues⁴. Both the property in the soil and the liberty or franchise of a port may become vested in the Crown by prescription; this was the manner in which most of the ports of the kingdom appear to have become vested, the Crown being the *prima facie* owner of every public port⁵. However advantageous a particular place might be as an anchorage, it was not a legal port at common law unless created by the authority of the Crown⁶ and there would be no consideration for claiming anchorage or other dues⁷ except under statutory authority.

1 Hale, de Portibus Maris, c 3; Hargrave, Law Tracts 51. As to the right of the Crown to create a new port with the right to take port duties see *Jenkins v Harvey* (1835) 1 Cr M & R 877 at 893-894 per Parke B. As to the royal prerogative see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 367 et seq; CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 46.

2 Hargrave, Law Tracts 58.

3 Hargrave, Law Tracts 55, 56. As to franchise ports see PARA 607 post. The creation of ports by the Crown by way of franchise is recited in Eliz 1 c 11 (Customs) (1558-9) (repealed).

4 Hargrave, Law Tracts 58; and see *Foreman v Free Fishers and Dredgers of Whitstable* (1869) LR 4 HL 266 at 285; *Jenkins v Harvey* (1835) 1 Cr M & R 877 at 894 per Parke B; *Exeter Corp v Warren* (1844) 5 QB 773. As to the common law right to take tolls and dues see PARA 678 post.

5 Hargrave, Law Tracts 54, 72.

6 Hale, de Portibus Maris, cc 3, 4, 5.

7 *Foreman v Free Fishers and Dredgers of Whitstable* (1869) LR 4 HL 266.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/3. CREATION, FORMATION AND USE OF PORTS AND HARBOURS/607. Franchise ports.

607. Franchise ports.

A franchise port was a complex entity consisting of: (1) something that was natural, namely a haven or access of the sea by which ships might conveniently come, a safe situation against winds where they might safely lie, and a good shore where they might conveniently unload; (2)

something that was artificial, such as quays, wharfs, cranes and warehouses, and customs houses¹; and (3) something that was civil, namely privileges and franchises such as the right to moor a ship² and to trade³, and several other characteristics given to it by civil authority⁴. It had a town as its head for the receipt of sailors and merchants, and might include more than the bare place where ships unload, and sometimes extended many miles⁵.

Where the port was a franchise and extended over tidal waters, the ownership of the soil was prima facie in the Crown on the same principle that the foreshore is presumed to belong to the Crown⁶, but it might belong to the grantee or some other person, for the monarch could create a port without any regard to the question of who was the owner of the soil⁷.

Former franchise ports such as Dover⁸ and Exeter⁹ now operate, in practice, under statutory powers, and ports operated otherwise than under statutory powers¹⁰ do not now, in practice, rely on a franchise granted by the Crown¹¹.

1 le 'houses of common receipt'.

2 le the jus applicandi.

3 le the jus mercati, as to which see *Prior of Tynemouth's Case* (1292) cited in Stuart Moore, History and Law of Foreshore 111, where the prior was restrained from holding a market at Shields to the prejudice of the port of Newcastle-upon-Tyne.

4 Hale, de Portibus Maris, c 2; *Foreman v Free Fishers and Dredgers of Whitstable* (1869) LR 4 HL 266 at 285.

5 Hale, de Portibus Maris, c 2; *Exeter Corpn v Warren* (1844) 5 QB 773. See also note 9 infra.

6 As to the ownership of the foreshore see CROWN PROPERTY vol 12(1) (Reissue) PARA 242 et seq; WATER AND WATERWAYS vol 100 (2009) PARAS 38, 71.

7 Where a subject claims a port by custom or prescription, the presumption is that he has not only the franchise, but the very water and soil within the port, for a seaport is a complex entity, as a manor: Hale, de Jure Maris, cc 5, 6; Hargrave, Law Tracts 22, 23. As to custom see generally CUSTOM AND USAGE.

8 A Royal Charter granted in 1606 granted powers to improve, maintain and administer Dover Harbour. Although never revoked the Charter has been effectively superseded by Acts of Parliament and harbour revision orders made under the Harbours Act 1964. As to harbour revision orders see PARAS 628-643 post.

9 'As all franchises in the kingdom are derived from the Crown . . . so in a special manner are the ports and the franchises thereof, which are *ostia regni*': *Exeter Corpn v Warren* (1844) 5 QB 773 at 801 per Lord Denman CJ, referring to Lord Hale. 'That this right of the Crown was exercised at some very remote period, and a port created of which Exeter was the caput, cannot now be disputed': *Exeter Corpn v Warren* supra per Lord Denman CJ. In that case it was held that there was evidence on which a jury could be satisfied that the franchise port of Exeter extended to Teignmouth. The Teignmouth Harbour Commissioners were established by the Teignmouth Harbour Act 1853 (the Commissioners were reconstituted by the Teignmouth Harbour Order 1924). The harbours at Exeter and Teignmouth are now each managed under statutory powers by Exeter City Council and the Teignmouth Harbour Commission respectively. Note that in December 2006 an application for a harbour revision order was made in relation to the harbour at Exeter.

10 Eg the Port of Par. A person who manages a port otherwise than under statutory powers cannot levy tolls and dues (unless he has a franchise from the Crown); charges must be made on a contractual basis.

11 The Crown prerogative power is thought never to have been used in modern times. It seems doubtful whether, in practice, this power could now be exercised.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/3. CREATION, FORMATION AND USE OF PORTS AND HARBOURS/608. Ancient ports.

608. Ancient ports.

At common law the Crown might not, in general, obstruct the trade of an ancient port vested in a subject, either by the creation of a new port within the limits or precincts of the former or by restricting the arrival of ships there by conditions in future charters, for that would be in derogation of its former grant, but the Crown might erect a new port in the vicinity of an old one, even if this prejudiced the trade of the old port¹; and it was said that the Crown might dissolve a port vested in itself originally by proclamation, or erect another in its place; and where an ancient port was vested in the Crown by prescription, a grant or charter of a new port might, it seems, have contained restrictions on the trade of the old port so as to bind the Crown, but not so as to bind the inhabitants of the old port who had acquired prescriptive rights, the rule in such cases being that the Crown might derogate from its own rights but not from those of others².

When granting a subject a franchise port the Crown might confer upon him, as a consideration for dedicating his land to the public and of his repairing the port, a right to levy dues in respect of the various commodities imported³.

1 Hargrave, Law Tracts 60, 61.

2 Hargrave, Law Tracts 60, 61. As to closing ports see PARA 618 post.

3 *Jenkins v Harvey* (1835) 1 Cr M & R 877. As to franchise ports see PARA 607 ante.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/3. CREATION, FORMATION AND USE OF PORTS AND HARBOURS/609. Customs ports.

609. Customs ports.

The Commissioners for Revenue and Customs have power to appoint and name any area as port of customs purposes¹.

1 See the Customs and Excise Management Act 1979 s 19; and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 935. The word 'port', as opposed to 'harbour', is commonly applied to customs ports, and the area of a port health district is fixed by reference to a port as defined for customs purposes: see the Public Health (Control of Disease) Act 1984 s 2; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 102.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/3. CREATION, FORMATION AND USE OF PORTS AND HARBOURS/610. Meanings of 'port' and 'harbour' at common law.

610. Meanings of 'port' and 'harbour' at common law.

A port may be natural, consisting of a haven or access of the sea by which ships may conveniently come, a safe situation against winds where they may safely lie, and a good shore where they may conveniently unload; or it may be artificial, containing such facilities as quays, wharves, cranes and warehouses¹. 'Port' may bear different meanings in different contexts².

A harbour, in its ordinary sense, is a place to shelter ships from the violence of the sea and where ships are brought for commercial purposes to load and unload goods³. It is generally a question of fact in each case whether a particular area of water is sufficiently enclosed to constitute a harbour.

1 Hale, *de Portibus Maris*, c 2. A port has been described as a 'place of safety for the ships and the goods, whilst the goods are being loaded or unloaded' (*Sailing Ship Garston Co v Hickie & Co* (1885) 15 QBD 580 at 588, CA; approved in *Hunter v Northern Marine Insurance Co Ltd* (1888) 13 App Cas 717 at 723, HL, per Lord Halsbury LC); and as a 'place where a vessel can lie in a position of more or less shelter from the elements, with a view to the loading or discharge of cargo' (*Hunter v Northern Marine Insurance Co Ltd* supra at 726 per Lord Herschell). As to franchise ports see PARA 607 ante.

2 *The Roumanian* [1915] P 26 at 43-44; affd [1916] 1 AC 124, PC. Under a charterparty, 'port' does not extend to the limits of the port but is confined to the usual place in the port at which loading vessels lie: see CARRIAGE AND CARRIERS vol 7 (2008) PARA 408. As to the meanings which 'port' may have in a policy of insurance see INSURANCE vol 25 (2003 Reissue) PARA 314.

3 *R v Hannam* (1886) 2 TLR 234, CA; *Nicholson v Williams* (1871) LR 6 QB 632 at 642.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/3. CREATION, FORMATION AND USE OF PORTS AND HARBOURS/611. Statutory definitions of 'harbour', 'wharf' and 'dock.'

611. Statutory definitions of 'harbour', 'wharf' and 'dock.'

'Harbour', in the Harbours Act 1964, unless the context otherwise requires and except where used with reference to a local lighthouse authority¹, means any harbour, whether natural or artificial, and any port, haven, estuary, tidal or other river or inland waterway navigated by sea-going ships², and includes a dock and a wharf³. In the Harbours Act 1964, unless the context otherwise requires, 'dock' means a dock used by sea-going ships⁴ and 'wharf' means any wharf, quay, pier, jetty or other place at which sea-going ships can ship or unship goods⁵ or embark or disembark passengers⁶.

'Harbour', in the Merchant Shipping Act 1995, includes estuaries, navigable rivers, piers, jetties and other works in or at which ships can obtain shelter or ship or unship goods or passengers⁷.

In the Harbours and Passing Tolls etc Act 1861, 'harbour' includes harbours properly so called, whether natural or artificial, estuaries, navigable rivers, piers, jetties and other works in or at which ships can obtain shelter, or ship and unship goods or passengers⁸.

1 'Local lighthouse authority' means any person having by law or usage authority over local lighthouses, buoys or beacons: Harbours Act 1964 s 57(1). 'Lighthouse' includes any floating and other light exhibited for the guidance of ships, and also any sirens and any other description of fog signals, and also any addition to a lighthouse of any improved light, or any siren, or any description of fog signal: Merchant Shipping Act 1995 s 223(1); definition applied by the Harbours Act 1964 s 57(1) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 33(b)). For the meaning of 'person' see PARA 605 note 4 ante. As to local lighthouse authorities see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1068.

Where the expression 'harbour' is used in the Harbours Act 1964 with reference to a local lighthouse authority it has the same meaning as in the Merchant Shipping Act 1995 (see the text to note 7 infra): Harbours Act 1964 s 57(1) (definition amended by the Merchant Shipping Act 1995 Sch 13 para 33(a)).

2 A 'sea-going ship' is a ship that in fact goes to sea and not merely one that could go to sea: *Salt Union v Wood* [1893] 1 QB 370. 'Ship' includes every description of vessel used in navigation, seaplanes on the surface of the water, and hovercraft within the meaning of the Hovercraft Act 1968: Harbours Act 1964 s 57(1) (definition amended by the Hovercraft Act 1968 s 3, Schedule para 5). 'Hovercraft' means a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle: Hovercraft Act 1968 s 4(1).

3 Harbours Act 1964 s 57(1). This definition of 'harbour' is also applied to the Docks and Harbours Act 1966 Pt III (ss 36-50) (as amended) (see s 50(1)), the Harbours (Loans) Act 1972 (see s 5(1)), the Dangerous Vessels Act 1985 (see s 7), and the Ports Act 1991 (see s 40(1)). The definition of 'harbour' for the purposes of the Harbours Act 1964 does not extend to any physical feature within the area, such as moorings: *R v Carrick District Council, ex p Pranker* [1999] QB 1119, [1999] 2 WLR 489. For the meaning of 'the harbour, dock or

pier' in the Harbours, Docks and Piers Clauses Act 1847 see PARA 663 note 3 post. For the meanings of 'harbour' and 'harbour area' in the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37 (as amended) see PARA 700 note 4 post.

4 Harbours Act 1964 s 57(1). See also *Rimmer v Premier Gas Engine Co Ltd* (1907) 97 LT 226 at 228, CA, per Cozens-Hardy MR; *Feeney v Pollexfen & Co Ltd* [1931] IR 589 at 597-598 per Kennedy CJ.

5 'Goods' includes fish, livestock and animals of all descriptions: Harbours Act 1964 s 57(1). 'Fish' includes molluscs and crustaceans: s 57(1).

6 *Ibid* s 57(1).

7 See the Merchant Shipping Act 1995 s 313(1); and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 229. 'Ship' in this definition includes every description of vessel used in navigation: s 313(1). This definition of 'harbour' is also applied to the Aviation and Maritime Security Act 1990 Pt III (ss 18-46) (as amended) (see s 46(1) (definition substituted by the Merchant Shipping and Maritime Security Act 1997 ss 25, 29(2), Sch 4 paras 1, 11(2)(b))). This definition of 'harbour' relates mainly to functions discussed in SHIPPING AND MARITIME LAW. For the meaning of 'harbour in the United Kingdom' see the Merchant Shipping Act 1995 s 151(1); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 428.

8 Harbours and Passing Tolls etc Act 1861 s 2.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/3.
CREATION, FORMATION AND USE OF PORTS AND HARBOURS/612. Meaning of 'fishery harbour'.

612. Meaning of 'fishery harbour'.

A 'fishery harbour' is a small harbour¹ which, in the opinion of the Secretary of State² or, in relation to Wales, the Welsh Ministers³, is principally used by the fishing industry⁴.

1 For these purposes, 'harbour' includes any haven, cove or other landing place: Sea Fish Industry Act 1951 s 21(7).

2 As to the Secretary of State see PARA 603 ante.

3 As to the transfer of functions to the Welsh Ministers see PARA 604 ante.

4 Sea Fish Industry Act 1951 s 21(7) (amended by the Transfer of Functions (Fishery Harbours) Order 2001, SI 2001/3503, art 5, Schedule para 1(1), (2)). The harbours in England and Wales which at the beginning of 1951 were fishery harbours are named in the Sea Fish Industry Act 1951 Sch 4, and a harbour is not to be deemed to have become or to have ceased to be a fishery harbour since then unless it is declared to have done so by an order under s 21 (as amended): s 21(8) (amended by the Transport and Works Act 1992 s 68, Sch 4 Pt II). Orders made under the Sea Fish Industry Act 1951 s 21 (as amended) are to be made by statutory instrument by the Secretary of State (s 21(12) amended by the Transfer of Functions (Fishery Harbours) Order 2001, SI 2001/3503, Schedule para 1(1), (3)) or, in relation to Wales, by the Welsh Ministers (see PARA 604 ante). The definition of 'fishery harbour' in the Sea Fish Industry Act 1951 is also applied to the Harbours Act 1964 (see s 57(1)) and the Harbours (Loans) Act 1972 (see s 5(1)).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/3.
CREATION, FORMATION AND USE OF PORTS AND HARBOURS/613. Meaning of 'dockyard port'.

613. Meaning of 'dockyard port'.

A dockyard port is any port, harbour, haven, roadstead, sound, channel, creek, bay or navigable river of the United Kingdom¹ in, on or near to which Her Majesty has any dock, dockyard, steam factory yard, victualling yard, arsenal, wharf or mooring².

1 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3. 'England' means, subject to any alteration of boundaries of local government areas, the area consisting of the counties established by the Local Government Act 1972 s 1 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 24), Greater London and the Isles of Scilly: Interpretation Act 1978 s 5, Sch 1. References to 'England' in Acts passed before 1967 include references to Wales: see the Interpretation Act 1978 Sch 2 para 5(a). 'Wales' means the combined area of the counties which were created by the Local Government Act 1972 s 20 (as originally enacted) (see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 37), but subject to any alteration made under s 73 (as amended) (consequential alteration of boundary following alteration of watercourse: see LOCAL GOVERNMENT vol 69 (2009) PARA 90): Interpretation Act 1978 Sch 1 (definition substituted by the Local Government (Wales) Act 1994 s 1(3), Sch 2 para 9). As to local government areas see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; and as to boundary changes see LOCAL GOVERNMENT vol 69 (2009) PARA 56 et seq. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

2 Dockyard Ports Regulation Act 1865 s 2.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/3. CREATION, FORMATION AND USE OF PORTS AND HARBOURS/614. Limits of ports, harbours and docks under statute.

614. Limits of ports, harbours and docks under statute.

Where a port or harbour is being improved, maintained or managed under statutory powers, the limits within which the powers of the harbour authority¹ and the harbour master² may be exercised are prescribed by the statutes or subordinate legislation relating to the harbour authority³. A harbour revision order⁴ may settle a harbour authority's limits of jurisdiction for all purposes or for limited purposes⁵. Her Majesty has power from time to time to define⁶ the limits of a dockyard port by Order in Council⁷. Where the limits of a port or harbour extend over tidal waters, the ownership of the bed is *prima facie* in the Crown on the same principle that the foreshore is presumed to belong to the Crown⁸. However, some harbour authorities own, or are lessees of, the whole or part of the beds of their harbours under conveyances or leases from the Crown⁹.

1 For the meaning of 'harbour authority' in the Harbours Act 1964 see PARA 619 post.

2 As to harbour masters see PARA 690 et seq post.

3 Eg: as to the limits of jurisdiction of the Port of London Authority see the Port of London Act 1968 Sch 1 para 2; and PARA 623 post. See also the Harbours Docks and Piers Clauses Act 1847 s 2.

4 As to harbour revision orders see PARA 628 et seq post.

5 See the Harbours Act 1964 s 14(1), Sch 2 para 6. As to the limits within which a harbour authority which is a competent harbour authority within the meaning of the Pilotage Act 1987 may exercise pilotage functions see ss 1, 3, 7(5); and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 570.

6 Ie for the purposes of the Dockyard Ports Regulation Act 1865.

7 Ibid s 3. For the meaning of 'dockyard port' see PARA 613 ante.

8 See WATER AND WATERWAYS vol 100 (2009) PARA 71. In England and Wales most land below high water mark is managed by the Crown Estate Commissioners on behalf of the Crown. Harbour authorities and other persons who wish to construct harbour works below high water mark must obtain the grant of an appropriate interest in the land, usually in the form of a lease. The Commissioners are required not to dispose of any land of the Crown estate except for the best consideration which in their opinion can reasonably be obtained, having regard to all the circumstances of the case but excluding any element of monopoly value attributable to the extent of the Crown's ownership of comparable land: see the Crown Estate Act 1961 s 3(1); and CROWN PROPERTY vol 12(1).

(Reissue) PARA 290. In certain limited circumstances the Commissioners may dispose of land without consideration or for such consideration as they see fit: see s 4; and CROWN PROPERTY vol 12(1) (Reissue) PARA 294.

In *Ipswich Borough Council v Moore* [2001] EWCA Civ 1273, (2001) Times, 25 October, [2001] All ER (D) 349 (Jul), it was held that the rights of the borough council as the owner of the bed and foreshore of the river Orwell within the port of Ipswich did not extend to control over moorings. Such control had been transferred to the port authority by successive pieces of legislation and thus the council could not insist that its consent, as well as that of the port authority, had to be obtained for the laying or use of any mooring, or that it was entitled to be paid a licence fee for the use of such mooring.

9 For example, the Port of London Authority owns much of the bed of that part of the Thames which is within its jurisdiction by virtue of an indenture of 1857 recited in the preamble to the Thames Conservancy Act 1857 (repealed), by which the interest of the Crown in most of the bed, soil and shores of the Thames landward of a stated limit were conveyed to the Corporation of London. That interest was transferred to the Conservators of the Thames by s 50 (repealed), together with the interest of the Crown in the rest of the bed above the stated limit (but excepting certain parts of the bed specified in s 51 (repealed)). The interests so acquired by the Conservators of the Thames were transferred to the Port of London Authority (in so far as those interests related to land below the authority's landward limit) by the Port of London Act 1908. As to the Port of London Authority see PARA 623 et seq post.

UPDATE

614 Limits of ports, harbours and docks under statute

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/3. CREATION, FORMATION AND USE OF PORTS AND HARBOURS/615. The public right of navigation.

615. The public right of navigation.

The public right of navigation applies in tidal harbours as in all tidal waters¹. This is a free right of passage which cannot be limited otherwise than by or under Act of Parliament or (in particular cases) by proof of immemorial user². The public right of navigation in tidal waters includes a right of anchoring, mooring and grounding in the ordinary course of navigation³. It includes all rights ancillary to the navigation of the ship navigated but does not include a right permanently to occupy part of the waters of a tidal harbour or over the foreshore even for a purpose which may assist the navigation of others⁴. The Crown's ownership of the bed of navigable rivers and arms of the sea is subject to the public right of navigation and if the Crown grants part of the soil of such bed the grantee takes subject to the public right of navigation⁵. The seaward limits⁶ of some harbours extend beyond the baseline for measuring the breadth of the territorial sea⁷ for the purposes of the United Nations Convention on the Law of the Sea 1982⁸. Where this is the case the right of innocent passage in the territorial sea under the Convention applies in the area in question⁹. No charges may be levied on foreign ships by reason only of their passage through the territorial sea¹⁰.

1 As to the general public right of navigation in tidal waters see WATER AND WATERWAYS vol 101 (2009) PARA 689 et seq.

2 *Denaby and Cadeby Main Collieries Ltd v Anson* [1911] 1 KB 171 at 198, CA, per Moulton LJ. At a harbour managed by a harbour authority within the meaning of the Harbours Act 1964 (see PARA 619 post), the public right of navigation is subject to the Acts of Parliament and subordinate legislation which apply to the harbour;

and such a harbour authority has power to impose dues (as to which see PARA 678 post) on ships using the harbour. See also *Gardner v Whitford* (1858) 4 CBNS 665; *Ipswich Borough Council v Moore* [2001] EWCA Civ 1273, (2001) Times, 25 October, [2001] All ER (D) 349 (Jul); *Dart Harbour and Navigation Authority v Secretary of State for Transport Local Government and the Regions* [2003] EWHC 1494 (Admin), [2003] 2 Lloyd's Rep 607, [2003] All ER (D) 339 (Jun).

3 See *Gann v Free Fishers of Whitstable* (1865) 11 HL Cas 192; *The Swift* [1901] P 168 (if a ship grounds otherwise than in the course of navigation, the owners, if damage is caused and negligence is proved, may be liable for damages); *A-G v Wright* [1897] 2 QB 318, CA; and WATER AND WATERWAYS vol 101 (2009) PARA 691.

4 See *Denaby and Cadeby Main Collieries Ltd v Anson* [1911] 1 KB 171, CA; *Earl of Iveagh v Martin* [1961] 1 QB 232, [1960] 2 All ER 668; and WATER AND WATERWAYS vol 101 (2009) PARA 691.

5 *Gann v Free Fishers of Whitstable* (1865) 11 HL Cas 192. As to Crown ownership of land below high water mark see CROWN PROPERTY vol 12(1) (Reissue) PARA 242 et seq.

6 The limits of jurisdiction of the harbour authority for the harbour in question specified in the legislation relating to that harbour authority.

7 As to the calculation of this baseline see the United Nations Convention on the Law of the Sea 1982 (Montego Bay, 10 December 1982 to 9 December 1984; TS 3 Misc 11 (1983); Cmnd 8941) arts 5-16; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 10. In practice, this is the same as the baseline prescribed by the Territorial Waters Order in Council 25 September 1964 (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 289), which has effect as if made under the Territorial Sea Act 1987.

8 The United Nations Convention on the Law of the Sea 1982 (see note 7 supra) was acceded to by the United Kingdom on 25 July 1997 and came into force in United Kingdom territorial waters on 24 August 1997. For the meaning of 'United Kingdom' see PARA 613 note 1 ante.

9 As to the nature of this right and its limitations see the United Nations Convention on the Law of the Sea 1982 arts 18-32. As to the circumstances in which the right may apply in internal waters see art 8.

10 United Nations Convention on the Law of the Sea 1982 art 26.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/3. CREATION, FORMATION AND USE OF PORTS AND HARBOURS/616. Harbour to be open to the public.

616. Harbour to be open to the public.

When once erected, a port ought to be free and open to all to go and come¹, subject to the payment of proper tolls and dues², and the Crown could not, at common law, resume a port granted by charter or restrict its limits as originally created³.

It is provided by statute that upon payment of the statutory rates⁴, and subject to the other statutory provisions⁵, the harbour, dock or pier⁶ is to be open to all persons for the shipping and unshipping⁷ of goods⁸ and the embarking and landing of passengers⁹. Some harbour authorities¹⁰ have power, for the purposes of, or in connection with, the management of the harbour in question, to appropriate harbour facilities for the exclusive or preferential use of specified trades, persons, vessels or goods, or classes of vessels or goods, notwithstanding the above provision¹¹. If a vessel is prevented from entering a harbour owing to the negligent act of another vessel so that the dock gates have to be closed the harbour authority is not liable¹².

1 Hale, de Portibus Maris, c 7; Hargrave, Law Tracts 84.

2 Hargrave, Law Tracts 58; and see *Foreman v Free Fishers and Dredgers of Whitstable* (1869) LR 4 HL 266; *Jenkins v Harvey* (1835) 1 Cr M & R 877 at 894 per Parke B; *Exeter Corp'n v Warren* (1844) 5 QB 773. As to the payment of tolls and dues at common law see PARA 678 post. As to the imposition of harbour charges under the Harbours Act 1964 see PARA 666 et seq post.

3 1 Bl Com (14th Edn) 264.

4 The Harbours, Docks and Piers Clauses Act 1847 s 33 refers to the rates made payable by that and the special Act. For the meaning of 'the special Act' see PARA 602 note 2 ante. 'Rate' means, unless there is something repugnant in the subject or context, any rate or duty or other payment in the nature of a rate or duty, payable under the special Act: s 3. Section 25 provides that rates are not to be taken until the harbour, dock or pier in respect of the use of which it is payable is completed and fit for the reception of vessels, or other purpose for which it is intended, but this provision is never incorporated in modern harbour legislation. Charges of this nature are now virtually always levied by harbour authorities as ship, passenger and goods dues under the Harbours Act 1964: see PARA 666 post. References to 'rates' in the Harbours, Docks and Piers Clauses Act 1847 are treated as references to such dues: see the Harbours Act 1964 s 26(3); and PARA 666 post.

5 le subject to the other provisions of the special Act: see the Harbours, Docks and Piers Clauses Act 1847 s 33.

6 For the meaning of 'harbour, dock or pier' see PARA 663 note 3 post.

7 The marketing of fish when landed must be regarded as part of the process of shipping and unshipping within the meaning of the Harbours, Docks and Piers Clauses Act 1847 s 33, and access to the docks must include access with such a vehicle as the party seeking access deems necessary subject to the power of the harbour authority to regulate such access by means of a valid and operative byelaw: *London and North Eastern Rly Co v British Trawlers Federation Ltd* [1934] AC 279, HL. As to byelaws see PARA 686 et seq post. Tug owners are entitled under the Harbours, Docks and Piers Clauses Act 1847 s 33, in the ordinary course of their business, to employ their tugs in providing towage services for vessels entering or leaving the harbour for the purpose of shipping or unshipping goods and/or the embarking or landing of passengers: *JH Piggott and Son v Docks and Inland Waterways Executive* [1953] 1 QB 338, [1953] 1 All ER 22. However, a byelaw prohibiting towage operations in the harbour except with the consent of the harbour master may be valid notwithstanding the Harbours, Docks and Piers Clauses Act 1847 s 33: *Peterhead Towage Services Ltd v Peterhead Bay Authority* 1992 SLT 593, Ct of Sess. See also *Dick v Badart, Freres* (1883) 10 QBD 387; *Great Central Rly v North Eastern Steam Fishing Co Ltd* (1906) 22 TLR 520; *London and North Eastern Rly Co v JW Chester & Son* (1937) 147 LT 308.

8 For the meaning of 'goods' in the Harbours, Docks and Piers Clause Act 1847 see PARA 663 note 2 post.

9 Ibid s 33. The Harbours, Docks and Piers Clause Act 1847 only applies where it is incorporated with local legislation (see PARA 602 ante), but s 33 is incorporated with the special legislation of nearly all harbour authorities for commercial harbours. It is not incorporated with the local legislation of the Port of London Authority but that legislation includes a provision substantially to the same effect: see the Port of London Act 1968 s 6. As to the Port of London Authority see PARAS 623-627 post. The Harbours, Docks and Piers Clauses Act 1847 s 33 imposes a duty to keep the harbour open; any operator is entitled to enquire whether a particular berth will be free at a particular time in the future. If the harbour authority truly states that the berth will be occupied, there is no breach of the duty which is to keep the harbour open subject to the right of others to use it: *Thoresen Car Ferries Ltd v Weymouth Portland Borough Council* [1977] 2 Lloyd's Rep 614 at 620 per Donaldson J. See also *Garland and Flexman v Wisbech Corp* [1962] 1 QB 151, [1961] 3 All ER 342. It appears that a person who suffers loss as a result of a harbour authority being in breach of its statutory duty under the Harbours, Docks and Piers Clauses Act 1847 s 33 is not entitled to damages: *KA and SBM Feakins Ltd v Dover Harbour Board* (1998) Times, 9 September, 142 Sol Jo LB 226.

10 le harbour authorities within the meaning of the Harbours Act 1964: see PARA 619 post.

11 Such a provision enables a harbour authority whose local legislation incorporates the Harbours, Docks and Piers Clauses Act 1847 s 33 to derogate to some extent from the rights of the public under that provision, but the power to appropriate facilities cannot be used solely to ban one particular lawful trade from the harbour. Any appropriation under such a power must be construed so as to derogate as little as possible from s 33: see *R v Dover Harbour Board, ex p Peter Gilder & Sons, R v Associated British Ports, ex p Plymouth City Council*, reported with *R v Coventry City Council, ex p Phoenix Aviation* [1995] 3 All ER 37. The Harbours Act 1964 s 40 (under which a harbour authority may make the use of its services and facilities subject to whatever terms and conditions it thinks fit: see PARA 686 post) is subservient to the Harbours, Docks and Piers Clauses Act 1847 s 33 and may not be invoked inconsistently with the harbour authority's overriding duty under s 33: *R v Dover Harbour Board, ex p Peter Gilder & Sons, R v Associated British Ports, ex p Plymouth City Council* supra.

12 *Anglo-Algerian Steamship Co Ltd v Houlder Line Ltd* [1908] 1 KB 659, in which it was held that the owners of the negligent vessel were also not liable, the negligent acts being too indirectly related to the plaintiffs' loss to constitute a good cause of action. It may be that a claim would not fail where the negligent act resulted in the obstruction of a public navigable channel giving access to the harbour: *Anglo-Algerian Steamship Co Ltd v Houlder Line Ltd* supra at 665 per Walton J.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/3.
CREATION, FORMATION AND USE OF PORTS AND HARBOURS/617. Access by adjoining owners.

617. Access by adjoining owners.

Every owner of land abutting on water, whether it is the sea or a tidal river, is entitled to access to and egress from the water in contact with his frontage¹. A wharfinger has a right of access to the water from the part of his wharf which fronts the river, and may also have a similar right of access from the sides of his wharf². Where a person is entitled to access to a wharf he may pass over any vessel or object which is placed in front of the wharf which interferes with his right of access³. The right of access is not necessarily co-extensive at all times with, and limited to, the riparian frontage, for a wharfinger may moor to his wharf a vessel of such length as to overlap his neighbour's frontage; and the vessel is entitled in the ordinary course of navigation to navigate to the wharf and to be there for a reasonable time⁴. However, the rights of both riparian owners in this respect are equal, neither having the right to the exclusive occupation of the space in front of his land for all time; and each is only entitled to use it at such times as are properly required for the exercise of his right of access⁵. If, therefore, the neighbour wishes to use access to his land, the overlapping vessel must be moved; and a person who places a vessel or other object in front of his land so as to prevent a ship getting to his neighbour's wharf is guilty of an unlawful obstruction of the right of navigation up to the wharf⁶.

1 See *A-G of Straits Settlements v Wemyss* (1888) 13 App Cas 192, PC; *Lyon v Fishmongers' Co* (1876) 1 App Cas 662, HL; and WATER AND WATERWAYS vol 100 (2009) PARAS 81-82. Compare *Tate & Lyle Industries v Greater London Council* [1983] 2 AC 509 at 533-534, [1983] 1 All ER 1159 at 1168-1169, HL, where riparian rights were held not to attach to jetties which, though connected to the riparian tenement were erected pursuant to the licence of the port authority on foreshore vested in the authority.

2 *Lyon v Fishmongers' Co* (1876) 1 App Cas 662, HL. See also WATER AND WATERWAYS vol 100 (2009) PARA 82.

3 *Eastern Counties Rly Co v Dorling* (1859) 5 CBNS 821.

4 *Original Hartlepool Collieries Co v Gibb* (1877) 5 ChD 713, where it was held to be unlawful to moor timber in front of a dock to prevent a vessel going to a neighbouring wharf.

5 A wharfinger who places a projection from the wharf which is damaged by an overlapping vessel on the fall of the tide is not entitled to recover damages: *Dalton v Denton* (1857) 1 CBNS 672.

6 *Original Hartlepool Collieries Co v Gibb* (1877) 5 ChD 713; *Land Securities Co Ltd v Commercial Gas Co* (1902) 18 TLR 405; *Fresh Wharf Ltd v Nicholson's Wharves Ltd* (1935) 79 Sol Jo 479. Wharfingers sometimes agree days when each is to use the berth at the wharf (see *South Wales and Liverpool Steamship Co Ltd v Nevill's Dock and Rly Co Ltd* (1913) 108 LT 568), or agree as to part use of a dock (see *Thomas W Ward Ltd v Alexander Bruce (Grays) Ltd* [1959] 2 Lloyd's Rep 472, CA).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/3.
CREATION, FORMATION AND USE OF PORTS AND HARBOURS/618. Closing ports.

618. Closing ports.

In time of peace the Crown might not, in general, restrain the free importation and exportation of goods by closing franchise ports¹ or laying an embargo on shipping², nor limit the importation and exportation of particular goods or goods generally to particular ports³. In time of war, exportation or importation might be restrained by the laying on of a general embargo where it was warranted by necessity⁴, or by the promulgation of blockades, and the necessity arising from public danger or a state of war might have justified the closing of the ports⁵. As from a day

to be appointed⁶, the Secretary of State has power to authorise harbour authorities⁷ to do anything which they ought in the interests of national defence to have power to do⁸. In general, a harbour operated under statutory powers can only be closed by Act of Parliament⁹, but closure of part of a harbour may be authorised by harbour revision order¹⁰.

1 See *Denaby and Cadeby Main Collieries Ltd v Anson* [1911] 1 KB 171, CA. As to franchise ports see PARA 607 ante. There are in practice no longer any franchise ports operating.

2 Hale, de Portibus Maris, c 9; Hargrave, Law Tracts 97. A proclamation laying an embargo upon all vessels laden with wheat was issued in 1766 in order to prevent famine, Parliament not being then sitting. This being clearly illegal (and contrary in particular to 22 & 23 Car 2 c 13 (Exportation of Beer, etc) (1670) (repealed)), it was found necessary to indemnify the advisers of the Crown and persons acting under the proclamation (7 Geo 3 c 7 (Indemnity) (1766-7) (repealed)).

3 Hale, de Portibus Maris, c 10; Hargrave, Law Tracts 99, 100. Power was conferred, however, by statute in 1939 to control exports and imports and is still in force: see the Import, Export and Customs Powers (Defence) Act 1939 s 1 (as amended). There are several other powers to restrict imports: see eg ANIMALS vol 2 (2008) PARAS 966-972.

4 1 BI Com (14th Edn) 270; 10 Parliamentary Debates (1st series), 961.

5 See WAR AND ARMED CONFLICT.

6 The Transport Act 1982 s 66 is to come into force on such day as the Secretary of State may by order appoint: s 76(2). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 603 ante.

7 For the meaning of 'harbour authority' see PARA 619 post; definition applied by the Transport Act 1982 s 66(7).

8 See *ibid* s 66; and PARA 739 post.

9 As to the duty of a body established by statute to carry on the service in question see *Gardner v London, Chatham and Dover Rly Co* (1867) 2 Ch App 201; *Re Salisbury Rly and Market House Co* [1969] 1 Ch 349, [1967] 1 All ER 813.

10 As to harbour revision orders see PARA 628 et seq post.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/4. HARBOUR AUTHORITIES/(1) IN GENERAL/619. Statutory definitions of 'harbour authority'.

4. HARBOUR AUTHORITIES

(1) IN GENERAL

619. Statutory definitions of 'harbour authority'.

In the Harbours Act 1964, 'harbour authority' means any person in whom are vested under that Act, by another Act, or by an order or other instrument (except a provisional order¹) made under another Act, or by a provisional order, powers or duties of improving, maintaining or managing a harbour².

'Harbour authority' is defined in the Merchant Shipping Act 1995, in relation to a harbour³, as: (1) the person⁴ who is the statutory harbour authority⁵ for the harbour; or (2) if there is no statutory harbour authority for the harbour, the person (if any) who is the proprietor of the harbour or who is entrusted with the function of managing, maintaining or improving the harbour⁶. This definition is applied for the purposes of the Aviation and Maritime Security Act 1990⁷.

In the Harbours and Passing Tolls etc Act 1861, 'harbour authority' includes, unless inconsistent with the context, all persons or bodies of persons, corporate or unincorporate, being proprietors of or entrusted with the duty of constructing, improving, managing, maintaining or lighting any harbour⁸.

1 'Provisional order' means an order confirmed by an Act, by the Board of Agriculture and Fisheries, the Minister of Agriculture and Fisheries or the Minister of Agriculture, Fisheries and Food in pursuance of the Fishery Harbours Act 1915 s 2(3)(ii) (repealed): Harbours Act 1964 s 57(1). As to the Board of Agriculture and Fisheries, the Minister of Agriculture and Fisheries, and the Minister of Agriculture, Fisheries and Food see PARA 603 ante.

2 Ibid s 57(1). For the meaning of 'harbour' see PARA 611 ante. This definition of 'harbour authority' is also applied to the Docks and Harbours Act 1966 Pt III (ss 36-50) (as amended) (see s 50(1)), the Harbours (Loans) Act 1972 (see s 5(1)), the Dangerous Vessels Act 1985 (see s 7), the Pilotage Act 1987 (see s 31(1); and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 565), and the Ports Act 1991 (see s 40(1)). For the meanings of 'harbour authority' and 'statutory harbour authority' in the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37 (as amended) see PARA 700 note 3 post.

For the purposes of the Harbours Act 1964, neither an internal drainage board, nor the Environment Agency nor a water undertaker is to be taken to be a harbour authority if it would otherwise only be taken to be so by reason of the fact that river works powers or duties are vested in it; and any reference in the Harbours Act 1964 to functions of a harbour authority relating to a harbour are to be construed as not including a reference to such powers and duties: s 58 (amended by the Water Act 1973 s 40(2), Sch 8 para 87; the Water Act 1989 s 190(1), Sch 25 para 31(2); the Water Consolidation (Consequential Provisions) Act 1991 s 3(1), Sch 3 Pt I; and by virtue of the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1). As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq. As to internal drainage boards see WATER AND WATERWAYS vol 101 (2009) PARA 569 et seq; and as to water undertakers see WATER AND WATERWAYS vol 100 (2009) PARA 134 et seq.

3 For the meaning of 'harbour' in the Merchant Shipping Act 1995 see PARA 611 ante.

4 For the meaning of 'person' see PARA 605 note 4 ante.

5 'Statutory harbour authority' means a harbour authority within the meaning of the Harbours Act 1964: Merchant Shipping Act 1995 s 313(1) (definition added by the Merchant Shipping and Maritime Security Act 1997 s 29(1), Sch 6 para 19(1), (2)(d)).

6 Merchant Shipping Act 1995 s 313(1) (definition substituted by the Merchant Shipping and Maritime Security Act 1997 Sch 6 para 19(2)(a)). This definition includes harbour authorities who manage harbours otherwise than under statutory powers, eg by virtue of the ownership of adjacent land. It relates mainly to functions discussed elsewhere in this work: see further SHIPPING AND MARITIME LAW. The Merchant Shipping Act 1995 also contains a definition of 'harbour authority' for the purposes of Pt VI Ch II (ss 131-151) (oil pollution): see s 151(1); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 428.

7 In the Aviation and Maritime Security Act 1990, 'harbour authority' means: (1) a harbour authority within the meaning of the Merchant Shipping Act 1995; or (2) the manager of any hoverport which does not form part of an area which consists of: (a) any harbour in the United Kingdom in respect of which there is a harbour authority within the meaning of the Merchant Shipping Act 1995; and (b) any land which is adjacent to such a harbour and which is either land occupied by the harbour authority or land in respect of which the harbour authority has functions of improvement, maintenance or management: Aviation and Maritime Security Act 1990 s 18(3)(a)(i), (ii) (s 18(3) substituted by the Merchant Shipping and Maritime Security Act 1997 s 25, Sch 4 para 2); Aviation and Maritime Security Act 1990 s 46(1) (definition substituted by the Merchant Shipping and Maritime Security Act 1997 Sch 4 para 11(3)).

8 Harbours and Passing Tolls etc Act 1861 s 2. For the meaning of 'harbour' for these purposes see PARA 611 ante.

UPDATE

619-622 Statutory definitions of 'harbour authority' ... Associated British Ports

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

619 Statutory definitions of 'harbour authority'

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/4. HARBOUR AUTHORITIES/(1) IN GENERAL/620. Creation or establishment of harbour authorities.

620. Creation or establishment of harbour authorities.

A harbour authority within the meaning of the Harbours Act 1964¹ will be either a body constituted by or under statute for the sole or principal purpose of improving, maintaining or managing one or more harbours² or some other body (such as a local authority or company formed under the Companies Act 1985) on which powers or duties for improving, maintaining or managing one or more harbours have been conferred by or under statute³. Formerly, the constitution of a body as a harbour authority or the establishment of an existing body as such an authority by the conferment of powers or duties as mentioned above was often effected by a local Act of Parliament or by a provisional order under the General Pier and Harbour Act 1861. That Act has been repealed and local Acts of Parliament can no longer be used to achieve purposes which can be achieved by a harbour revision or empowerment order or a harbour reorganisation scheme⁴. Now, therefore, a new harbour authority must generally be constituted or established as such by a harbour revision order⁵, a harbour empowerment order⁶ or a harbour reorganisation scheme⁷ under the Harbours Act 1964, or as a successor company under the Ports Act 1991⁸. A number of existing harbour authorities have been constituted or established as such in one of these ways. Exceptionally, the Port of London Authority was established by a public general Act of Parliament⁹ and so was the Milford Haven Port Authority (originally under the name of the Milford Haven Conservancy Board)¹⁰. In each of these cases the Act in question was promoted as a hybrid Bill¹¹. The former British Transport Docks Board was reconstituted as Associated British Ports by a public general Act of Parliament¹².

1 For the meaning of 'harbour authority' in the Harbours Act 1964 see PARA 619 ante.

2 For the meaning of 'harbour' in the Harbours Act 1964 see PARA 611 ante.

3 Eg Portland Port Limited became a harbour authority by virtue of the powers or duties conferred on it by the Portland Harbour Revision Order 1997, SI 1997/2949.

4 See the Transport and Works Act 1992 s 68, Sch 4 Pt II. This repealed, inter alia, the Harbours Act 1964 s 62 which provided that, for the purposes of the promotion of a Bill containing provision for any object that might be achieved by a harbour revision or empowerment order or a harbour reorganisation scheme, it should be deemed, notwithstanding the passing of that Act, that that object could not be achieved without new authority from Parliament.

5 As to harbour revision orders see PARAS 628-643 post.

6 As to harbour empowerment orders see PARAS 645-647 post.

- 7 As to harbour reorganisation schemes see PARAS 648-653 post.
- 8 As to the establishment of successor companies and the transfer to them of harbour undertakings under the Ports Act 1991, and the transfer under that Act of the Port of London Authority's undertaking at Tilbury see PARA 768 et seq post.
- 9 See the Port of London Act 1908.
- 10 See the Milford Haven Conservancy Act 1958.
- 11 As to hybrid Bills see PARLIAMENT vol 34 (Reissue) PARA 839 et seq; STATUTES vol 44(1) (Reissue) PARA 1212.
- 12 See the Transport Act 1981 Pt II (ss 5-14), Sch 4. As to Associated British Ports see further PARA 622 post.

UPDATE

619-622 Statutory definitions of 'harbour authority' ... Associated British Ports

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/4. HARBOUR AUTHORITIES/(1) IN GENERAL/621. Types of harbour authority.

621. Types of harbour authority.

From a constitutional point of view, virtually all harbour authorities within the meaning of the Harbours Act 1964¹, apart from Associated British Ports² (which, constitutionally, is unique), the Environment Agency³, the British Waterways Board⁴ and the Crown⁵, fall within one of the following categories:

- 3 (1) companies formed and registered under the Companies Act 1985⁶;
- 4 (2) companies constituted by local Acts of Parliament⁷;
- 5 (3) boards constituted for the purpose by or under statute⁸;
- 6 (4) local authorities⁹.

1 For the meaning of 'harbour authority' in the Harbours Act 1964 see PARA 619 ante.

2 As to Associated British Ports see PARA 622 post.

3 The Environment Agency is the harbour authority for a few small harbours by virtue of functions transferred to it from the former National Rivers Authority: see the Environment Act 1995 s 2(1)(a)(vi); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 70.

4 The British Waterways Board is the harbour authority for a few small harbours at the seaward ends of some of the canals which were vested in it by the Transport Act 1962. The British Waterways Board is the only remaining nationalised harbour authority. As to the British Waterways Board see WATER AND WATERWAYS vol 101 (2009) PARA 725 et seq.

5 The Crown is the harbour authority for dockyard ports. For the meaning of 'dockyard port' see PARA 613 ante; and as to the Dockyard Ports Regulation Act 1865 see PARAS 689, 693 post.

6 As to the formation and registration of companies under the Companies Act 1985 see COMPANIES. Some companies so formed and registered which are harbour authorities for major harbours became so by virtue of the transfer to them of the undertakings of existing harbour authorities in connection with privatisation under the Ports Act 1991 Pt I (ss 1-20) (see PARA 763 et seq post). The Tees and Hartlepool Port Authority Ltd

(successor to the Tees and Hartlepool Port Authority, which was established under the Tees and Hartlepool Port Authority Act 1966 and then renamed under the Tees and Hartlepool Port Authority Act 1969) and Medway Ports Ltd (successor to the Medway Ports Authority established under the Medway Ports Reorganisation Scheme 1968, contained in the Medway Ports Reorganisation Scheme 1968 Confirmation Order 1969, SI 1969/1045; and later renamed Ports of Sheerness Ltd) became harbour authorities in this way. Under the Ports Act 1991 Pt II (ss 21-30) the Port of London Authority's docks and landing places at Tilbury have been transferred to Port of Tilbury London Ltd, a company formed and registered under the Companies Act 1985: see PARAS 627, 790 post. Some other harbour authorities which are companies formed and registered under the Companies Act 1985 manage harbours transferred to them by harbour revision orders from Sealink Harbours Ltd to whom harbours formerly vested in the British Railways Board had been transferred: see the Transport Act 1981 s 2 (repealed). As to harbour revision orders see PARAS 628-643 post.

7 Eg the Mersey Docks and Harbour Company. The Mersey Docks and Harbour Board had been constituted as the harbour authority for the Port of Liverpool as a body corporate with perpetual succession and a common seal by the Mersey Docks and Harbour Act 1857 s 5 (repealed). The Board was reconstituted as a company known as the Mersey Docks and Harbour Company by the Mersey Docks and Harbour Act 1971 s 4(1). Legislation of local application is not generally noted in this work.

8 These boards are usually known as 'trust ports' although the expression does not appear in any statute or statutory instrument. The composition of trust ports varies considerably. An example of a trust port which is the harbour authority for a major harbour is the Port of Tyne Authority created by the Port of Tyne Reorganisation Scheme 1967 (contained in the Port of Tyne Reorganisation Scheme 1967 Confirmation Order 1968, SI 1968/942).

9 Few local authorities in England and Wales are now harbour authorities for commercial harbours.

UPDATE

619-622 Statutory definitions of 'harbour authority' ... Associated British Ports

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/4. HARBOUR AUTHORITIES/(2) ASSOCIATED BRITISH PORTS/622. Associated British Ports.

(2) ASSOCIATED BRITISH PORTS

622. Associated British Ports.

The British Transport Docks Board, which was constituted under the Transport Act 1962¹, was reconstituted under the name Associated British Ports as from 31 December 1982². Associated British Ports is a board without share capital, but it is the statutory subsidiary of its holding company (Associated British Ports Holdings plc), a company limited by shares, formed and registered originally under the Companies Act 1948 and designated by the Secretary of State as the holding company of Associated British Ports³. The holding company has powers in relation to Associated British Ports corresponding to those of a holding company over a wholly-owned subsidiary⁴. As from 31 December 1982 the commencing capital debt of Associated British Ports in respect of sums borrowed from the Secretary of State was extinguished, and on that day Associated British Ports issued and paid to the holding company securities and sums of money in accordance with directions by the Secretary of State and the holding company issued and paid to the Secretary of State or his nominees securities and sums of money in accordance with such directions⁵.

The Secretary of State has disposed of his holding in Associated British Ports Holdings plc. The holding company may nominate another company to be the holding company in its place provided that the nominated company is controlled by the original holding company⁶.

Associated British Ports continues to be a body corporate, and its directors (of which there must be not less than five nor more than thirteen) are appointed by Associated British Ports Holdings plc for such period as that company may determine⁷. The directors of Associated British Ports must pay to the holding company such sums as appear to the directors to be justified by the profits of Associated British Ports⁸.

Unlike the British Transport Docks Board, Associated British Ports is not one of the 'boards' as defined in the Harbours Act 1964⁹. In consequence, certain provisions of the Harbours Act 1964¹⁰ and the Docks and Harbours Act 1966¹¹ which do not apply to the boards (and which therefore used not to apply to the British Transport Docks Board) apply to Associated British Ports as they apply to harbour authorities generally¹². With certain exceptions¹³, the provisions of the Transport Act 1962 and the Transport Act 1968 relating to the boards no longer apply to Associated British Ports¹⁴.

Associated British Ports has certain general duties, including the duty to provide port facilities at its harbours to such extent as it may think expedient¹⁵. It must also have due regard to efficiency, economy and safety of operation as respects the services and facilities provided by it and its subsidiaries¹⁶. In the performance of its functions it must have regard to the interests in general of its employees and the employees of its subsidiaries¹⁷. However, these duties and liabilities are not enforceable, either directly or indirectly, by proceedings before any court¹⁸.

The powers of Associated British Ports (in addition to its general powers as a harbour authority and powers under local legislation at particular harbours) include the operation of harbours and provision of port facilities¹⁹; the consignment and carriage of goods²⁰; carrying on of activities of a ship's agent²¹; storage of goods²²; development of land²³; construction and operation of pipelines²⁴; provision of incidental amenities and facilities²⁵; carrying on of certain other connected businesses²⁶; acquisition of further harbour undertakings²⁷; disposal and discontinuance of parts of its undertaking²⁸; promotion of and opposition to Bills in Parliament²⁹; training, education and research³⁰; provision of accommodation³¹; payment of pensions³²; acquisition and compulsory purchase of land³³; making of charges for its services and facilities³⁴; borrowing and giving guarantees³⁵; forming subsidiaries³⁶; and entering into working agreements³⁷. It may also purchase, manufacture or repair anything required³⁸, acquire any undertaking³⁹ and subscribe for shares or securities in any body corporate for the purposes of its business⁴⁰. It may lend money⁴¹ and invest sums not immediately required for the purposes of its business⁴², and do all other things which in its opinion are necessary or expedient to facilitate the proper carrying on of its business⁴³. However, there are restrictions on certain descriptions of financial arrangement which may be entered into by Associated British Ports and its subsidiaries⁴⁴. Associated British Ports must exercise its control over its subsidiaries so as to ensure that they do not engage in activities which Associated British Ports itself has no power to engage in⁴⁵.

Certain provisions of the companies legislation as to registration of charges, accounts and audit, director's report and other matters apply to Associated British Ports⁴⁶. Associated British Ports must keep at its principal office documents recording any procedural requirements or restrictions on its competence laid down by the holding company and those documents must be available for inspection by any person on request⁴⁷.

1 See the Transport Act 1962 s 1(7), Sch 1 Pt I.

2 See the Transport Act 1981 s 5(1); and the Associated British Ports (Appointed Day and Designation of Holding Company) Order 1982, SI 1982/1887.

3 See the Transport Act 1981 s 5(2)-(4); and the Associated British Ports (Appointed Day and Designation of Holding Company) Order 1982, SI 1982/1887. As to the Secretary of State see PARA 603 ante.

4 See the Transport Act 1981 s 5(2).

5 See *ibid* s 6.

6 See *ibid* s 13 (amended by the Companies Consolidation (Consequential Provisions) Act 1985 s 30, Sch 2). A company is controlled by another company if, and only if, all the issued voting shares in the company are held by that other company or by a company controlled by that other company: Transport Act 1981 s 13(6).

7 See *ibid* s 7(1)-(4). As to the constitution and proceedings of Associated British Ports see s 7(5), Sch 2 (amended by the Enterprise Act 2002 (Disqualification from Office: General) Order 2006, SI 2006/1722, art 2(2), Sch 2 para 3(a)).

8 See the Transport Act 1981 s 11 (amended by the Companies Consolidation (Consequential Provisions) Act 1985 Sch 2; and the Companies Act 1989 s 23, Sch 10 Pt II).

9 'The Boards' means the British Waterways Board and includes the Scottish Transport Group and any subsidiary within the meaning of the Transport Act 1968 (see s 159(1) (as amended) of the Board or of the Group: Harbours Act 1964 s 57(1) (definition amended by the Transport Act 1968 s 156(2), Sch 16; the Transport Act 1980 s 69, Sch 9; the Transport Act 1981 ss 14, 40, Sch 4 Pt I; and the Transport Act 2000 s 274, Sch 31 Pt IV). As to the British Waterways Board see WATER AND WATERWAYS vol 101 (2009) PARA 725 et seq.

10 *Ie* the Harbours Act 1964 s 26 (see PARA 666 post), s 27 (as amended) (see PARA 667 post), s 30 (as amended) (see PARA 670 post), s 31 (as amended) (see PARA 671 post), s 40 (see PARA 686 post), and s 42 (as substituted and amended) (see PARA 684 post).

11 *Ie* the Docks and Harbours Act 1966 s 37 (as amended) (see PARA 744 post), and s 39 (see PARA 679 post).

12 Transport Act 1981 Sch 4 para 1(2).

13 *Ie* the Transport Act 1962 s 1(1) (as amended), ss 13(1), 14(1)(b), 24(4), Pt II (ss 31-42) (as amended), ss 43(4), (5), 52(4), 67(15), (16) (as amended), ss 69-71, 74 (as amended), ss 75, 81 (as amended), Sch 7 para 24, Sch 7 Pt IV (as amended); and the Transport Act 1968 s 51(5) (as amended), ss 51(6), 125 (as amended), s 141(2) (as amended), s 144 (as amended), Sch 16 para 7(1) (as amended). As to these various provisions see WATER AND WATERWAYS.

14 See the Transport Act 1981 Sch 4 para 2.

15 *Ibid* s 9(1).

16 *Ibid* s 9(2).

17 *Ibid* s 9(3).

18 *Ibid* s 9(4). As to the interpretation of such statutory provisions see STATUTES vol 44(1) (Reissue) PARA 1349. For a case concerning the liability in negligence of a harbour authority towards its employees see *Rice v Secretary of State for Trade and Industry; Thompson v Secretary of State for Trade and Industry* [2007] EWCA Civ 289, [2007] All ER (D) 53 (Apr); and NEGLIGENCE vol 78 (2010) PARA 17.

19 Transport Act 1981 s 8(1), Sch 3 paras 1, 2.

20 *Ibid* Sch 3 para 3.

21 *Ibid* Sch 3 para 4.

22 *Ibid* Sch 3 para 5.

23 *Ibid* Sch 3 para 6.

24 *Ibid* Sch 3 para 7.

25 *Ibid* Sch 3 para 8.

26 *Ibid* Sch 3 paras 9-11.

27 *Ibid* Sch 3 para 12.

28 *Ibid* Sch 3 para 13.

29 Ibid Sch 3 para 14.

30 Ibid Sch 3 para 15.

31 Ibid Sch 3 para 16.

32 Ibid Sch 3 para 17.

33 Ibid Sch 3 paras 18, 19.

34 Ibid Sch 3 para 20.

35 Ibid Sch 3 para 21.

36 Ibid Sch 3 para 29.

37 Ibid Sch 3 para 30.

38 See ibid Sch 3 paras 23, 32. Associated British Ports may also purchase, manufacture or repair anything required for the purposes of the business of any public transport authority or any subsidiary of such an authority; and 'public transport authority' means the British Railways Board, the British Waterways Board and Transport for London: see Sch 3 para 31 (amended by the National Bus Company (Dissolution) Order 1991, SI 1991/510, art 5(2), Schedule; and the Transport for London (Consequential Provisions) Order 2003, SI 2003/1615, art 2, Sch 1 para 10). As from a date to be appointed the reference in this definition to the British Railways Board is repealed: see the Transport Act 2000 ss 274, 275(1), Sch 31 Pt IV. As to the British Waterways Board see WATER AND WATERWAYS vol 101 (2009) PARA 725 et seq. As to Transport for London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 269-321.

39 Transport Act 1981 Sch 3 para 24.

40 Ibid Sch 3 para 25.

41 Ibid Sch 3 para 26.

42 Ibid Sch 3 para 27.

43 Ibid Sch 3 para 28.

44 See ibid Sch 3 para 22.

45 Ibid s 8(4). As to the protection of persons dealing in good faith with Associated British Ports see s 8(2), (3).

46 See ibid s 10 (amended by the Associated British Ports (Application of Companies Acts) Regulations 1983, SI 1983/559, reg 2).

47 See the Transport Act 1981 s 12(1). It is an offence for Associated British Ports to fail to comply with a request under s 12(1) (s 12(2)), such offence being punishable on summary conviction with a fine not exceeding level 3 on the standard scale (s 12(3) (amended by virtue of the Criminal Justice Act 1982 s 46)). As to the standard scale see PARA 605 note 13 ante.

UPDATE

619-622 Statutory definitions of 'harbour authority' ... Associated British Ports

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

622 Associated British Ports

NOTE 6--Transport Act 1981 s 13(6) amended: SI 2009/1941.

NOTE 46--Transport Act 1981 s 10 amended: SI 2008/948, SI 2009/1941.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/4. HARBOUR AUTHORITIES/ (3) THE PORT OF LONDON AUTHORITY/623. Limits of the jurisdiction of the Port of London Authority.

(3) THE PORT OF LONDON AUTHORITY

623. Limits of the jurisdiction of the Port of London Authority.

The limits within which the Port of London Authority has jurisdiction as a harbour authority are specially defined¹. Certain powers of the authority are not exercisable in certain specified areas².

¹ The limits commence at a line (known as the landward limit) drawn across the Thames from a stone pillar erected at grid co-ordinates TQ 16361 71912 on the Surrey bank to the nearest point of mean high water level on the Middlesex bank and extend down both sides of the Thames at mean high water level to lines (known as the seaward limit) drawn from 51 degrees 37 minutes 00 seconds north latitude, 00 degrees 57 minutes 19 seconds east longitude (Foulness Point, Essex) to 51 degrees 46 minutes 05 seconds north latitude, 01 degrees 20 minutes 32 seconds east longitude (Gunfleet Old Lighthouse) and thence to 51 degrees 26 minutes 36 seconds north latitude, 01 degrees 25 minutes 30 seconds east longitude and thence to 51 degrees 24 minutes 55 seconds north latitude, 00 degrees 54 minutes 21 seconds east longitude (Warden Point, Kent): Port of London Act 1968 s 2(1), Sch 1 paras 1, 2. The limits include all islands, rivers, streams, creeks, waters, watercourses, channels, harbours, docks and places, but do not include specified waters: see Sch 1 para 2 (amended by the Port of London Authority Harbour Revision Order 1989, SI 1989/774; and the Port of London Authority Harbour Revision Order 1999, SI 1999/1353). The Port of London Authority Harbour Revision Order 1999, SI 1999/1353, extends the limits of the Port of London to include an area which had previously been excluded from those limits because prior to 1987 it had been outside the territorial waters of the United Kingdom: see the Port of London Authority Harbour Revision Order 1999, SI 1999/1353, art 3.

² Port of London Act 1968 s 187, Sch 8. The areas in question are the Medway approach area and areas off Southend-on-Sea and Sheerness.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/4. HARBOUR AUTHORITIES/ (3) THE PORT OF LONDON AUTHORITY/624. Constitution and proceedings of the Port of London Authority.

624. Constitution and proceedings of the Port of London Authority.

The Port of London Authority was constituted for the purpose of administering, preserving and improving the Port of London¹. The Port of London Act 1908 transferred to the authority the undertakings of various dock companies together with all the rights, powers, duties, property and liabilities of the Conservators of the Thames below the landward limit of the Port of London².

The authority is a body corporate with perpetual succession and a common seal³, and consists of not less than seven and not more than 12 members⁴. The chairman of the authority is appointed by the Secretary of State⁵, who must from time to time, after consultation with the chairman, appoint such number of persons not being officers of the authority as he considers appropriate to serve as members of the authority⁶. The authority must from time to time appoint such further number of persons not being officers of the authority as it considers appropriate to serve as members of the authority⁷. The chairman and other members to be appointed⁸ must be selected from among persons appearing to the Secretary of State or the

authority to have wide experience of, and to have shown capacity in, one or more of the following: business management, financial matters, sea transport, inland transport, international commerce, the organisation of workers, riverside activities, environmental matters affecting the area of the Port of London, and navigation⁹. At least one of the members appointed by the Secretary of State must be a person with wide experience of navigation (including the command of sea-going ships, pilotage and navigational aids)¹⁰. Appointments made by the Secretary of State must be notified in writing¹¹ to the secretary of the authority and appointments made by the authority must be notified in writing by the secretary to the Secretary of State¹². The authority must from time to time appoint such officers of the authority as it considers appropriate to serve as members of the authority¹³. In certain circumstances the Secretary of State or, in the case of an appointment by the authority, the authority may declare a member's office vacant¹⁴. The validity of any proceedings of the authority is not affected by a vacancy among its members or by a defect in the appointment or co-option of a member¹⁵.

The authority determines its own quorum and arrangements relating to its meetings¹⁶, and may delegate any of its functions to a committee¹⁷. Minutes must be made, and meetings for which they have been so made and signed are deemed to have been duly convened and held¹⁸. A member who is interested in a contract made, or proposed to be made, by the authority otherwise than in the ordinary course of business must disclose the nature of his interest¹⁹.

1 See the Port of London Act 1908 s 1(1) (repealed). As to the general powers and duties of the Port of London Authority see PARA 625 et seq post. As to the statutory framework for the operation of the Port of London Authority see generally the Port of London Acts and Orders 1968 to 1982. The Port of London Acts 1968 and 1970, the Port of London (Borrowing Powers) Revision Order 1971, SI 1971/1227, the Port of London Authority (Constitution) Revision Order 1975, SI 1975/1890, the Port of London Authority (Borrowing Powers etc) Revision Order 1980, SI 1980/1068, and the Port of London Act 1982 may be cited together as the Port of London Acts and Orders 1968 to 1982: Port of London Act 1982 s 1(1), (2).

2 As to powers formerly exercisable by the Conservators of the Thames see the Port of London Act 1968 s 15. As to the limits of jurisdiction of the Port of London Authority see PARA 623 ante.

3 Ibid s 212, Sch 11 para (d). A document purporting to be duly executed under the seal of the authority must be received in evidence and, unless the contrary is proved, is deemed to be a document so executed: s 4, Sch 2 Pt II para 7.

4 Ibid s 3 (substituted by the Port of London Authority (Constitution) Revision Order 1975, SI 1975/1890, art 5; and amended by the Port of London Authority Harbour Revision Order 1992, SI 1992/3011, art 2(1), (2); and the Port of London Authority (Constitution) Harbour Revision Order 2005, SI 2005/3514, art 3(1)).

5 Port of London Act 1968 s 3, Sch 2 Pt I para 2(1) (Sch 2 Pt I substituted by the Port of London Authority (Constitution) Revision Order 1975, SI 1975/1890, art 5; Port of London Act 1968 Sch 2 Pt I para 2(1) amended by the Port of London Authority Harbour Revision Order 1992, SI 1992/3011, art 2(2)). A casual vacancy in the office of the chairman must be filled by the appointment by the Secretary of State of another person: see the Port of London Act 1968 Sch 2 Pt I para 12 (as so substituted; and Sch 2 Pt I para 12 further substituted by the Port of London Authority Harbour Revision Order 1992, SI 1992/3011, art 2(2)). As to the Secretary of State see PARA 603 ante. As to the appointment of a vice-chairman see the Port of London Act 1968 Sch 2 Pt II para 1 (substituted by the Port of London Authority (Constitution) Revision Order 1975, SI 1975/1890, art 5(4)).

6 Port of London Act 1968 Sch 2 Pt I para 3(1) (Sch 2 Pt I as substituted (see note 5 supra); Sch Pt 1 para 3 further substituted by the Port of London Authority Harbour Revision Order 1992, SI 1992/3011, art 2(2)). The number of members including the chairman not being officers of the authority must not at any time be less than two or more than four: Port of London Act 1968 Sch 2 Pt I para 3(1) proviso (as so substituted; and amended by the Port of London Authority (Constitution) Harbour Revision Order 2005, SI 2005/3514, art 3(2)(a)).

7 Port of London Act 1968 Sch 2 Pt I para 3(1A) (Sch 2 Pt I as substituted (see note 5 supra); and Sch 2 Pt I para 3(1A), (1B) added by the Port of London Authority (Constitution) Harbour Revision Order 2005, SI 2005/3514, art 3(2)(b)). The number of such members must not at any time be less than three or more than four: Port of London Act 1968 Sch 2 Pt I para 3(1B) (Sch 2 Pt I as so substituted; and Sch 2 Pt I para 3(1B) as so added).

8 Ie under ibid Sch 2 Pt I para 3 (as substituted and amended): see the text and notes 6-7 supra).

9 Ibid Sch 2 Pt I para 4 (Sch 2 Pt I as substituted (see note 5 supra); and Sch 2 Pt I para 4 amended by the Port of London Authority (Constitution) Harbour Revision Order 2005, SI 2005/3514, art 3(3)(c)).

10 Port of London Act 1968 Sch 2 Pt I para 4 proviso (Sch 2 Pt I as substituted (see note 5 supra); and Sch 2 Pt I para 4 amended by the Port of London Authority (Constitution) Harbour Revision Order 2005, SI 2005/3514, art 3(2)(d)).

11 For the meaning of 'writing' see PARA 605 note 3 ante.

12 Port of London Act 1968 Sch 2 Pt I para 5 (Sch 2 Pt I as substituted (see note 5 supra); and Sch 2 Pt I para 5 amended by the Port of London Authority (Constitution) Harbour Revision Order 2005, SI 2005/3514, art 3(2)(e)).

13 Port of London Act 1968 Sch 2 Pt I para 6(1) (Sch 2 Pt I as substituted (see note 5 supra); and Sch 2 Pt I para 6 further substituted by the Port of London Authority (Constitution) Harbour Revision Order 2005, SI 2005/3514, art 3(2)(f)). Subject to the Port of London Act 1968 Sch 2 Pt I (as substituted and amended), every member appointed under this provision must continue in office as a member until such time as he ceases to be an officer of the authority: Sch 2 Pt I para 6(1) (as so substituted). The number of officers appointed as members by the authority must not at any time be less than two or more than four: Sch 2 Pt I para 6(2) (as so substituted).

Members of the Port of London Authority must not at the time of their first taking office have attained the age of 64: Sch 2 Pt I para 7 (as substituted: see note 5 supra). As to the resignation and retirement of members see Sch 2 Pt I paras 8-10 (as so substituted). As to the payment of salaries, fees, allowances and expenses to members of the Port of London Authority see Sch 2 Pt I para 13 (as so substituted).

14 See ibid Sch 2 Pt I para 11 (Sch 2 Pt I as substituted (see note 5 supra); and Sch 2 Pt I para 11 amended by the Port of London Authority (Constitution) Harbour Revision Order 2005, SI 2005/3514, art 3(2)(g)).

15 Port of London Act 1968 Sch 2 Pt II para 2.

16 See ibid Sch 2 Pt II para 3.

17 See ibid Sch 2 Pt II para 4. However, the majority of members of such a committee must be members of the authority: Sch 2 Pt II para 4 proviso (amended by the Port of London Act 1982 s 7, Sch 2).

18 See the Port of London Act 1968 Sch 2 Pt II para 5.

19 Ibid Sch 2 Pt II para 6. The disclosure must be recorded in the minutes of the meeting and the member must not take any part in any deliberation or decision of the authority or of the committee in respect to that contract: Sch 2 Pt II para 6.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/4. HARBOUR AUTHORITIES/ (3) THE PORT OF LONDON AUTHORITY/625. General powers and duties of the Port of London Authority.

625. General powers and duties of the Port of London Authority.

It is the duty of the Port of London Authority to provide, maintain, operate and improve such port and harbour services and facilities in, or in the vicinity of, the Thames¹ as it considers necessary or desirable and to take such action as it considers incidental to the provision of such services and facilities²; and to take such action as it considers necessary or desirable for or incidental to the improvement and conservancy of the Thames³.

The authority has power either by itself or by arrangement between itself and another person⁴ to take such action as it considers necessary or desirable, whether or not in, or in the vicinity of, the Thames: (1) for the purpose of discharging or facilitating the discharge of any of its duties, including the proper development or operation of the undertaking⁵; (2) for the provision, maintenance and operation of warehousing services and facilities, and services and facilities for the consignment of goods on routes which include the port premises⁶; and (3) for the

purpose of turning its resources to account so far as not required for the purposes of the undertaking⁷.

The authority must as soon as possible after the end of each financial year report to the Secretary of State⁸ on the exercise and performance of its functions during the preceding financial year⁹, and it must also provide him with such returns, statistics and information as he may require¹⁰. The authority is given various general powers by the Port of London Act 1968 in relation to the discharge by it of its statutory functions. In particular, it has power to acquire land¹¹, securities¹² and certain undertakings¹³. It may also promote or oppose any local or private legislation¹⁴, construct vessels¹⁵ and make donations to public institutions and charities¹⁶. It may provide services and facilities for its employees, both past and present¹⁷, and may additionally provide refreshment rooms in connection with its undertaking¹⁸.

1 'The Thames' means so much of the river Thames, the Thames estuary, rivers, streams, creeks and watercourses and the sea as is within the limits described in the Port of London Act 1968 Sch 1 para 2 (as amended) (see PARA 623 ante): s 2(1).

2 Ibid s 5(1)(a). Particular powers conferred or particular duties laid upon the authority by the Port of London Act 1968 are not to be construed as derogating from each other or from the generality of s 5(1) and (2) (see the text to notes 4-7 infra): s 5(3).

3 Ibid s 5(1)(b). See also note 2 supra. As to the power to make hydrographic surveys of the bed of the Thames see s 7; and PARA 626 post.

4 For the meaning of 'person' see PARA 605 note 4 ante.

5 Port of London Act 1968 s 5(2)(a). See also note 2 supra.

6 Ibid s 5(2)(b). See also note 2 supra. 'Port premises' means the docks, landing places and all other works and land at any time vested in, belonging to or administered by, the authority: s 2(1).

7 Ibid s 5(2)(c). See also note 2 supra.

8 As to the Secretary of State see PARA 603 ante.

9 See the Port of London Act 1968 s 8. As to the financial management and borrowing powers of the authority see ss 46-59 (as amended).

10 See the Port of London Act 1968 s 9.

11 See *ibid* s 11.

12 See *ibid* s 13.

13 See *ibid* s 10.

14 Ibid s 12. As to local and private legislation see STATUTES vol 44(1) (Reissue) PARA 1211 et seq.

15 See *ibid* s 14.

16 See *ibid* s 17.

17 As to staff benefits see *ibid* s 19(1). As to the pension fund see s 19(2), Sch 3 (amended by the Decimal Currency Act 1969 s 10(1); and the Transport Pension Schemes (Decimal Currency) Order 1971, SI 1971/189, art 3, Schedule para 1). As to staff housing see the Port of London Act 1968 s 20.

18 See *ibid* s 18.

626. Other powers and duties of the Port of London Authority.

Statutory powers contained in the Port of London Act 1968¹ relating to the Thames² include the power to dredge and improve the bed³ and banks of the Thames⁴, to license works and dredging by other persons⁵, to regulate vessels in the Thames by means of general and special directions and at the docks which the authority owns or administers⁶, and to raise and remove vessels sunk, stranded or abandoned in the Thames or the docks which the authority owns or administers⁷. It also has various powers with respect to goods traffic⁸ and to regulate the entry of dangerous goods⁹ and to make byelaws for a variety of purposes¹⁰. The authority has power, with the approval of Trinity House¹¹, to place buoys, beacons, lights or other devices of any nature designed to assist navigation in or near the Thames¹². The authority is also responsible for the registration of lighters, tugs and boats for navigation in the Thames¹³ and the government and registration, including licensing, of watermen and lightermen¹⁴. It has power to make certain charges¹⁵ together with powers in relation to the assessment, collection and recovery of charges¹⁶.

1 The Port of London Act 1968 does not incorporate the provisions of the Harbours, Docks and Piers Clauses Act 1847, but includes a number of corresponding provisions. The Port of London Act 1968 s 6, for example, corresponds substantially to the Harbours, Docks and Piers Clauses Act 1847 s 33 (see PARA 616 ante) in providing for public access to port premises, but the Port of London Act 1968 provides that s 6 must not be construed as derogating from the powers of the authority to discontinue any part of its undertaking: s 6(3). As to incorporation of the Harbours, Docks and Piers Clauses Act 1847 see PARA 602 ante.

2 See the Port of London Act 1968 ss 76-80 (as amended) (obligations relating to tidal works), ss 81-85 (as amended) (landing places), ss 86, 87 (fish), ss 88-93 (miscellaneous provisions); and WATER AND WATERWAYS vol 101 (2009) PARA 712. For the meaning of 'the Thames' see PARA 625 note 1 ante.

3 'Bed', in relation to the Thames, means the bed, shore and banks of the Thames below mean high water level: *ibid* s 2(1). The authority has a duty to make surveys of the bed of the Thames as it considers necessary or desirable in the discharge of its functions: see s 7.

4 See *ibid* ss 60-65 (as amended). As to the limits of the authority's jurisdiction see PARA 623 ante.

5 See *ibid* ss 66-75 (as amended). As to the considerations which the authority may take into account in deciding whether to grant or refuse a licence for the construction of works see *R v Port of London Authority, ex p Kynoch Ltd* [1919] 1 KB 176, CA. As to the extent of the rights over the bed and water of the river conferred by a licence for the construction of jetties see *Tate & Lyle Industries v Greater London Council* [1983] 2 AC 509 at 534, [1983] 1 All ER 1159 at 1169, HL, per Lord Templeman.

6 See the Port of London Act 1968 ss 108-118 (as amended). Of the docks which were owned or administered by the authority at the time the Act was passed, the authority's undertaking at those in London has been discontinued and those at Tilbury in Essex have been transferred to Port of Tilbury Ltd under the Ports Act 1991 Pt II (ss 21-30) (as amended) (see PARAS 627, 790 post). The functions of the authority under any local statutory provision so far as relating to the docks transferred to that company (including, subject to any provision of the transfer scheme made under s 23(4)(b), those so relating under the Port of London Act 1968 ss 113-115, 118) have been transferred to and become functions of the company (see the Ports Act 1991 s 22(8) (b)).

7 See the Port of London Act 1968 ss 120-123 (as amended).

8 See the Port of London Act 1968 ss 141-148 (as amended).

9 See the Port of London Act 1968 s 149 (amended by the Port of London Act 1982 ss 3(2), 7, Sch 1 Pt II para 7, Sch 2); and the Port of London Act 1968 s 153 (amended by virtue of the Criminal Justice Act 1982 s 46).

10 See the Port of London Act 1968 ss 161-170 (as amended).

11 *Ie* the Corporation of Trinity House of Deptford Strond: see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1069.

12 See the Port of London Act 1968 ss 62, 196.

13 See *ibid* ss 124-138 (as amended).

14 See the Port of London Act 1968 ss 139, 140. As to the status of licensed watermen on the Thames see *Thames Launches Ltd v Trinity House Corp'n (Deptford Strond) (No 2)* [1962] Ch 153, [1961] 2 All ER 913.

15 See the Port of London Act 1968 ss 21, 26. These powers are additional to the power to charge ship, passenger and goods dues, which is conferred on all harbour authorities by the Harbours Act 1964 s 26 (see PARA 666 post). The powers of the authority to make charges (including certain charges which are ship, passenger and goods dues) are subject to certain exemptions: see the Port of London Act 1968 ss 27-33 (as amended). Note that the exemption for estuary traffic (see the Port of London Act 1968 s 32) has ceased to have effect in so far as it prohibits charging river duties of tonnage on any vessel by reason only of its passing through the limits on a voyage between a place on the river Medway and any other place outside those limits: see the Port of London Authority Harbour Revision Order 1999, SI 1999/1353, art 4.

16 See the Port of London Act 1968 ss 22-24, 35-45 (as amended).

UPDATE

626 Other powers and duties of the Port of London Authority

NOTE 2--Port of London Act 1968 ss 86, 87 repealed: Marine and Coastal Access Act 2009 s 234(h), Sch 22 Pt 5.

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627. Privatisation of the port of Tilbury.

In pursuance of powers in the Ports Act 1991¹, property, rights, liabilities and functions of the Port of London Authority relating to the port of Tilbury were transferred on 28 February 1992 to Port of Tilbury London Ltd, a company which had been formed by the authority under the statutory powers². On 11 March 1992 the authority disposed of its holding in the company³.

1 See the Ports Act 1991 Pt II (ss 21-30) (as amended); and PARA 790 post.

2 See the Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992, SI 1992/284.

3 Ie pursuant to the Ports Act 1991 s 26: see PARA 790 post.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/5. HARBOUR ORDERS AND SCHEMES/(1) HARBOUR REVISION ORDERS/(i) In general/628. Objects of harbour revision orders.

5. HARBOUR ORDERS AND SCHEMES

(1) HARBOUR REVISION ORDERS

(i) In general

628. Objects of harbour revision orders.

A 'harbour revision order' is an order which may be made by the Secretary of State¹ in relation to a harbour² which is being improved, maintained or managed by a harbour authority³ in the exercise and performance of statutory powers and duties⁴ for achieving all or any of the following objects⁵:

- 7 (1) reconstituting the harbour authority by which the harbour is being improved, maintained or managed or altering its constitution, or establishing, as the harbour authority, in lieu of the existing one, an existing body designated, or a body constituted, for that purpose⁶;
 - 8 (2) regulating, in whole or to a less extent, the procedure of the authority, or that of any of its committees, and fixing the quorum at a meeting of the authority or of any committee⁷;
 - 9 (3) varying or abolishing duties or powers imposed or conferred on the authority for a specified purpose⁸ by a statutory provision⁹ of local application affecting the harbour¹⁰;
 - 10 (4) imposing or conferring on the authority, for the purpose mentioned in head (3) above, duties or powers, including a power to make byelaws, either in addition to or in substitution for duties or powers imposed or conferred as mentioned in that head¹¹;
 - 11 (5) transferring from the authority to another, or to the authority from another, all or any of the property vested in, as the case may be, the authority or that other, and held for the purposes of the harbour¹²;
 - 12 (6) settling, either for all or for limited purposes, the limits within which the authority is to have jurisdiction or altering, either for all or for limited purposes, the limits previously settled¹³;
 - 13 (7) conferring on the authority power to acquire, whether by agreement or compulsorily, land¹⁴ described in the order, being land required by the authority for the purpose of its being used as the site of works which it has, or will have by virtue of the order, power to execute for some other purpose of the harbour¹⁵;
 - 14 (8) extinguishing or diverting public rights of way over footpaths¹⁶, bridleways¹⁷ or restricted byways¹⁸ for the purposes of works described in the order or works ancillary to such works¹⁹;
 - 15 (9) extinguishing public rights of navigation for the purposes of works described in the order or works ancillary to such works, or permitting interference with the enjoyment of such rights for the purposes of such works or for the purposes of works carried out by a person authorised by the authority to carry them out²⁰;
 - 16 (10) authorising justices of the peace to appoint, on the nomination of the authority, persons to act as constables within any limits within which it has jurisdiction in relation to the harbour and within one mile outside any such limits²¹;
 - 17 (11) enabling the authority to close part of the harbour or to reduce the facilities available in the harbour²²;
 - 18 (12) empowering the authority to dispose of property vested in it and held for the purposes of the harbour which is no longer required for those purposes²³;
 - 19 (13) empowering the authority, alone or with others, to develop land not required for the purposes of the harbour with a view to disposing of the land or of interests in it, and to acquire land by agreement for the purpose of developing it together with such land²⁴;
 - 20 (14) empowering the authority to delegate the performance of any of its functions²⁵ except:
- 1
1. (a) a duty imposed on the authority by or under any enactment²⁶;
 2. (b) the making of byelaws²⁷;
 3. (c) the levying of ship, passenger and goods dues²⁸;
 4. (d) the appointment of harbour, dock and pier masters²⁹;
 5. (e) the nomination of persons to act as constables³⁰;

6. (f) functions relating to the laying down of buoys³¹, the erection of lighthouses³² and the exhibition of lights, beacons and sea-marks, so far as those functions are exercisable for the purposes of the safety of navigation³³;
- 2
- 21 (15) empowering the authority to borrow money, with or without limitation with respect to the amount that may be borrowed or the time or manner in which the power may be exercised³⁴;
- 22 (16) empowering the authority to levy at the harbour, charges³⁵ other than ship, passenger and goods dues or varying or abolishing such charges levied by the authority at the harbour³⁶;
- 23 (17) securing the efficient collection of charges levied by the authority at the harbour and specifying the times at which and the persons by whom such charges are to be paid³⁷;
- 24 (18) regulating the application of money in the nature of revenue received by the authority and securing that the authority's financial affairs are properly managed³⁸;
- 25 (19) varying or extinguishing any exemption from charges levied by the authority at the harbour or any other right or privilege enjoyed at the harbour³⁹;
- 26 (20) securing the welfare of the authority's officers and servants and empowering it to provide, or secure the provision of, pensions, gratuities and other like benefits for or in respect of its officers and servants⁴⁰;
- 27 (21) extending the time within which anything is required or authorised by a statutory provision of local application affecting the harbour to be done in relation to the harbour by the authority or fixing a time within which anything authorised by the order to be so done must be done⁴¹;
- 28 (22) imposing or conferring on the authority duties or powers, including powers to make byelaws, for the conservation of the natural beauty of all or any part of the harbour or of any of the fauna, flora or geological or physiographical features in the harbour and all other natural features⁴²;
- 29 (23) any object which, although not falling within any of the heads above, appears to the Secretary of State to be one the achievement of which will increase the efficient functioning of the harbour⁴³;
- 30 (24) repealing superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour, or consolidating any statutory provisions of local application affecting the harbour⁴⁴.

1 The Harbours Act 1964 refers to 'the appropriate minister', but this now means the Secretary of State: see ss 14(7), 57(1). This provision originally vested the functions in relation to a harbour not being a fishery harbour in 'the minister', being the Minister of Transport (see s 57(1)), and the functions in relation to a fishery harbour in the Minister of Agriculture, Fisheries and Food. As to the devolution of such functions to the Secretary of State, and as to the Secretary of State, see PARA 603 ante. In relation to Wales, all functions of a Minister of the Crown under the Harbours Act 1964 s 14 (as amended) relating to fishery harbours are transferred to the Welsh Ministers: see PARA 604 ante. For the meaning of 'harbour' see PARA 611 ante; and for the meaning of 'fishery harbour' see PARA 612 ante.

An order may be made either on the application of the harbour authority or of certain other persons or bodies (see PARA 630 post), or for certain purposes by the Secretary of State of his own motion (see PARA 631 post).

2 References to a 'harbour' in the Harbours Act 1964 s 14, Sch 2 (both as amended), include references to a depot provided under the Docks and Harbours Act 1966 s 36 (see PARA 743 post): s 36(4).

3 For the meaning of 'harbour authority' see PARA 619 ante. Where two or more harbours are being improved, maintained or managed by the same harbour authority or by harbour authorities which are members of the same group, a harbour revision order may relate to more than one of the harbours: Harbours Act 1964 s 14(4A) (added by the Transport and Works Act 1992 s 63(1), Sch 3 para 1(1), (5)). For this purpose, two authorities are members of the same group if one is a subsidiary (within the meaning of the Companies Act 1985: see COMPANIES vol 15 (2009) PARA 25) of the other, or if both are subsidiaries of another company (within the meaning of that Act): Harbours Act 1964 s 14(4A) (as so added).

4 As to the meaning of references to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties see PARA 605 note 5 ante.

5 Harbours Act 1964 s 14(1). This provision is expressed to be subject to the provisions of s 14 (as amended) and to the subsequent provisions of the Act: s 14(1). As to the procedure for making harbour revision orders see PARA 632 et seq post. The exercise by a harbour authority of any powers conferred on it by a harbour revision order must have as one of its main purposes, if not as its main purpose, the management and operation of the harbour: *R (on the application of Richards) v Pembrokeshire County Council* [2004] EWCA Civ 1000, [2005] LGR 105, [2004] All ER (D) 550 (Jul).

6 Harbours Act 1964 s 14(1), Sch 2 para 1.

7 Ibid Sch 2 para 2.

8 le for the purpose of: (1) improving, maintaining or managing the harbour (ibid Sch 2 para 3(a)); (2) marking or lighting the harbour, raising wrecks in it or otherwise making its navigation safe (Sch 2 para 3(b)); or (3) regulating the carrying on by others of activities relating to the harbour or of activities on harbour land (Sch 2 para 3(c) (amended by the Transport and Works Act 1992 s 63(1), Sch 3 para 9)). For the meaning 'harbour land' see PARA 605 note 8 ante.

9 'Statutory provision', unless the context otherwise requires, means a provision, whether of a general or a special nature, contained in, or in a document made or issued under, the Harbours Act 1964 or any other Act, whether of a general or special nature: s 57(1).

10 Ibid Sch 2 para 3.

11 Ibid Sch 2 para 4.

12 Ibid Sch 2 para 5. This object of transferring property includes the object of transferring, so far as they relate to the transferred property, all or any of the duties and powers imposed and conferred on, as the case may be, the authority or the other by a statutory provision of local application affecting the harbour: Sch 2 para 5.

Where a harbour revision order or a harbour reorganisation scheme (as to which see PARAS 648-653 post) provides for the transfer of property, rights and liabilities of one of the Boards (see PARA 622 note 9 ante) to some other authority, the Secretary of State may with Treasury approval direct that the new authority is to assume, as from the date of the transfer, a debt to him of an amount to be determined by him: see the Docks and Harbours Act 1966 s 41(1), (2)(a). The amount of the debt is so much of the Board's commencing capital debt and of the principal of certain loans as the Secretary of State may think proper having regard to the property, rights and liabilities transferred from the Board by the order or scheme: s 41(2)(b) (amended by the Transport Act 1968 s 156(2), Sch 16 para 8(3)). The Secretary of State may require security for the debt, and give directions as to the rate of interest, the time for repayment and other terms: see the Docks and Harbours Act 1966 s 41(5), (6). There are provisions for making estimates and for eventual adjustment: see s 41(7), (8). Repayments and interest on the debt assumed by the new authority are to be paid into the National Loans Fund (as to which see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 727 et seq; FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1334): s 41(9) (amended by the National Loans Act 1968 ss 2, 24(2), Sch 1, Sch 6 Pt I). The Secretary of State must prepare an account of any debt assumed by the new authority and of the sums paid into the National Loans Fund and send it to the Comptroller and Auditor General, who must examine, certify and report on the account and lay copies of it with his report before each House of Parliament: Docks and Harbours Act 1966 s 41(10) (amended by the National Loans Act 1968 Sch 1). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517. As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726. There are provisions for a consequential reduction in the liabilities of the Board from which the debt has been transferred: see the Docks and Harbours Act 1966 s 41(3), (4), (7) (s 41(3) amended by the Transport Act 1968 Sch 16 para 8(3)).

13 Harbours Act 1964 Sch 2 para 6.

14 For the meaning of 'land' see PARA 605 note 8 ante.

15 Harbours Act 1964 Sch 2 para 7.

16 'Footpath' has the same meaning as in the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 64): Harbours Act 1964 s 57(1) (definition added by the Transport and Works Act 1992 Sch 3 para 9(1), (3)).

17 'Bridleway' has the same meaning as in the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 64): Harbours Act 1964 s 57(1) (definition added by the Transport and Works Act 1992 Sch 3 para 7(1), (2)).

18 'Restricted byway' has the same meaning as in the Countryside and Rights of Way Act 2000 Pt 2 (ss 47-72) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 603); Harbours Act 1964 s 57(1) (definition added by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, reg 2, Schedule Pt I).

19 Harbours Act 1964 Sch 2 para 7A (added by the Transport and Works Act 1992 Sch 3 para 9(1), (3); and amended by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, Schedule Pt I).

20 Harbours Act 1964 Sch 2 para 7B (added by the Transport and Works Act 1992 Sch 3 para 9(1), (3)). As to the public right of navigation see PARA 615 ante.

21 Harbours Act 1964 Sch 2 para 8. The justices may also be authorised to dismiss persons so appointed, and to confer on persons so appointed, while acting within the mentioned limits or within one mile outside any such limits, the powers which a constable has within his constableness: Sch 2 para 8. As to the powers for appointing and dismissing constables conferred by the Harbours, Docks and Piers Clauses Act 1847 see PARA 759 post. As to justices of the peace see MAGISTRATES vol 29(2) (Reissue) PARA 501 et seq. As to the office of constable see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

22 Harbours Act 1964 Sch 2 para 8A (added by the Transport and Works Act 1992 Sch 3 para 9(1), (3)).

23 Harbours Act 1964 Sch 2 para 9.

24 Ibid Sch 2 para 9A (added by the Transport and Works Act 1992 Sch 3 para 9(1), (5)).

25 For the meaning of 'functions' see PARA 605 note 2 ante.

26 Harbours Act 1964 Sch 2 para 9B(a) (Sch 2 para 9B added by the Transport and Works Act 1992 Sch 3 para 9(1), (5)). 'Enactment' does not include an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament: Interpretation Act 1978 s 5, Sch 1. Where an Act describes or cites a portion of an enactment by referring to words, sections or other parts from or to which (or from and to which) the portion extends, the portion described or cited includes the words, sections or other parts referred to unless the contrary intention appears: s 20(1). Where an Act refers to an enactment, the reference, unless the contrary intention appears, is a reference to that enactment as amended, and includes a reference thereto as extended or applied, by or under any other enactment, including any other provision of that Act: s 20(2). 'Act' means an Act of Parliament: Sch 1. As to the Scottish Parliament see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

27 Harbours Act 1964 Sch 2 para 9B(b) (as added: see note 26 supra).

28 Ibid Sch 2 para 9B(c) (as added: see note 26 supra). 'Ship, passenger and goods dues' means, in relation to a harbour, charges (other than any exigible by virtue of the Merchant Shipping Act 1995 s 210(1), (2) (as amended)) of any of the following kinds: (1) charges in respect of any ship for entering, using or leaving the harbour, including charges made on the ship in respect of marking or lighting the harbour; (2) charges for any passengers embarking or disembarking at the harbour (but not including charges in respect of any services rendered or facilities provided for them); and (3) charges in respect of goods brought into, taken out of, or carried through the harbour by ship (but not including charges in respect of work performed, services rendered or facilities provided in respect of goods so brought, taken or carried): Harbours Act 1964 s 57(1); Interpretation Act 1978 s 17(2)(a). For the meaning of 'ship' see PARA 611 note 2 ante; and for the meaning of 'goods' see PARA 611 note 5 ante. Mooring charges do not constitute ship dues for the purposes of the Harbours Act 1964 s 57(1): *R v Carrick District Council, ex p Pranker* [1999] QB 1119, [1999] 2 WLR 489. The words 'other than any exigible by virtue of the Merchant Shipping Act 1995 s 210(1), (2) (as amended)' supra refer to charges leviable by a local lighthouse authority which is not a harbour authority, such charges formerly being exigible by virtue of the Harbours Act 1964 s 29(2), (3) (repealed by the Merchant Shipping Act 1995 s 314(1), Sch 12): see further SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1088. For the meaning of 'local lighthouse authority' see PARA 611 note 1 ante.

29 Harbours Act 1964 Sch 2 para 9B(d) (as added: see note 26 supra).

30 Ibid Sch 2 para 9B(e) (as added: see note 26 supra).

31 Any reference in the Harbours Act 1964 to a buoy or beacon is to be construed as including a reference to any other mark or sign of the sea: s 57(3).

32 For the meaning of 'lighthouse' see PARA 611 note 1 ante.

33 Harbours Act 1964 Sch 2 para 9B(f) (as added: see note 26 supra)

34 Ibid Sch 2 para 10. As to the general borrowing power of harbour authorities see PARA 679 post.

35 'Charges', unless the context otherwise requires, includes fares, rates, tolls and dues of every description: *ibid* s 57(1).

36 *Ibid* Sch 2 para 11.

37 *Ibid* Sch 2 para 12.

38 *Ibid* Sch 2 para 13.

39 *Ibid* Sch 2 para 14.

40 *Ibid* Sch 2 para 15.

41 *Ibid* Sch 2 para 16.

42 *Ibid* Sch 2 para 16A (added by the Transport and Works Act 1992 Sch 3 para 9(1), (6)).

43 Harbours Act 1964 Sch 2 para 17. In the case of a harbour revision order that provides for the establishment of a body as the harbour authority for the harbour to which the order relates in lieu of the existing one, references in heads (2)-(24) in the text to the authority (except the reference in head (3), those other than the second in head (5), and the second in head (16)) are to be construed as referring to the body established by the order as the harbour authority, and in the excepted cases as referring to the existing one: s 14(4).

44 *Ibid* s 14(2A) (added by the Transport Act 1981 s 18(1), Sch 6 para 2).

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

628 Objects of harbour revision orders

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 3--Harbours Act 1964 s 14(4A) amended: SI 2009/1941.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/5. HARBOUR ORDERS AND SCHEMES/(1) HARBOUR REVISION ORDERS/(i) In general/629. Contents of harbour revision orders.

629. Contents of harbour revision orders.

A harbour revision order¹ may include all such provisions as appear to the Secretary of State² to be requisite or expedient for rendering of full effect any other provision of the order³. The order

may also include any supplementary, consequential or incidental provisions appearing to him to be requisite or expedient for the purposes of, or in connection with, the order, including⁴:

- 31 (1) penal provisions⁵;
- 32 (2) provisions incorporating, with or without modifications, any provisions of the Lands Clauses Acts⁶ or any other enactment⁷;
- 33 (3) provisions for:
- 3
 - 7. (a) excluding or modifying any provision of any Act or of any instrument made under any Act (including the Harbours Act 1964); and
 - 8. (b) for repealing any statutory provision⁸ of local application affecting the harbour⁹ to which the order relates¹⁰; and
- 4
 - 34 (4) such other provisions repealing or amending any general Act, or varying or revoking any order made under any general Act, or any trust or other arrangement, as appears to the Secretary of State to be necessary or expedient for the purpose of any provision of the order made¹¹ with the object of securing the welfare of, or empowering a harbour authority¹² to provide pensions and similar benefits for or in respect of, the authority's staff¹³.

Where a harbour revision order includes provision for the compulsory acquisition of land¹⁴, there must, in the case of each parcel of land proposed to be acquired compulsorily, be annexed to the order a map of a scale not less than 1:2500 on which the boundaries of that parcel are plainly delineated¹⁵. Where such an order includes provision for extinguishing or diverting a public right of way over a footpath, bridleway or restricted byway¹⁶, there must be annexed to the order a map of a scale not less than 1:2500 on which the path or way concerned, and in the case of a diversion, the new path or way, are plainly delineated¹⁷.

Where provision for the compulsory acquisition of land is included in a harbour revision order, the order must be so framed as to secure:

- 35 (i) that if the land is ecclesiastical property¹⁸ at the time of the acquisition, any sum agreed upon or awarded for the fee simple of the land is paid to the Church Commissioners¹⁹; and
- 36 (ii) that any sum to be paid by way of compensation for damage sustained by reason of severance²⁰ or injury²¹ affecting land that is ecclesiastical property is so paid²².

An interest in land in which there is a Crown or duchy interest²³ may be acquired compulsorily²⁴, and a power in relation to land in which there is a Crown or duchy interest (other than a power to acquire land compulsorily) may be conferred by a harbour revision order²⁵, subject in each case to the consent of the appropriate authority²⁶.

There are savings in respect of the establishment and alteration of telegraphic lines²⁷.

1 For the meaning of 'harbour revision order' see PARA 628 ante. As to the preconditions for the making of the order see PARA 630 post. As to the procedure on making the order see PARA 632 et seq post.

2 As to the Secretary of State see PARA 603 ante; and see PARA 628 note 1 ante.

3 Harbours Act 1964 s 14(3) (amended by the Transport and Works Act 1992 s 63(1), Sch 3 para 1(1), (4) (a)).

4 The inclusion of the specific descriptions of provision mentioned is without prejudice to the generality of the foregoing words: Harbours Act 1964 s 14(3).

5 A penal provision in a harbour revision order may not be so framed as to permit of a person's being punished otherwise than on conviction or as to permit: (1) on summary conviction: (a) in the case of an offence triable either summarily or on indictment, the infliction of a fine exceeding the prescribed sum; (b) in the case of an offence triable only summarily, the infliction of a fine exceeding level 4 on the standard scale or, in the case of a continuing offence, a daily fine exceeding £50 for each day on which the offence continues after conviction (*ibid* s 14(3)(a)(i), (ii) (amended by the Transport Act 1981 Sch 6 para 14(1), (2); and by virtue of the Criminal Justice Act 1982 s 46)); and (2) on conviction on indictment, the infliction of a penalty other than a fine (Harbours Act 1964 s 14(3)(b) (amended by the Transport Act 1981 Sch 6 para 14(1), (3))). For the meaning of 'person' see PARA 605 note 4 ante. As to the prescribed sum see PARA 605 note 15 ante; and as to the standard scale see PARA 605 note 13 ante. As to offences by corporations under the Harbours Act 1964 see PARA 757 post.

6 'The Lands Clauses Acts' means the Lands Clauses Consolidation Act 1845; the Lands Clauses Consolidation Acts Amendment Act 1860; and any Acts for the time being in force amending those Acts: Interpretation Act 1978 ss 5, 22(1), Schs 1, 2 para 4. See generally COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 509.

7 For the meaning of 'enactment' see PARA 628 note 26 ante. An enactment of which provisions are commonly incorporated in harbour revision orders is the Harbours Docks and Piers Clauses Act 1847: see PARA 602 ante.

8 For the meaning of 'statutory provision' see PARA 628 note 9 ante.

9 For the meaning of 'harbour' see PARA 611 ante. See also PARA 628 note 2 ante.

10 Harbours Act 1964 s 14(3) (amended by the Transport Act 1981 s 18, Sch 6 para 3; and the Transport and Works Act 1992 s 63(1), Sch 3 para 1(1), (4)(b), (c)). By virtue of the Harbours Act 1964 s 14(3) (as amended), the order may include provision for the settlement by a court or otherwise of any dispute or other matter arising in connection with any of the other provisions of the order: Docks and Harbours Act 1966 s 45.

11 *Ie* under the Harbours Act 1964 s 14(1), Sch 2 para 15: see PARA 628 ante.

12 For the meaning of 'harbour authority' see PARA 619 ante.

13 Docks and Harbours Act 1966 s 43(3).

14 For the meaning of 'land' see PARA 605 note 8 ante. The Secretary of State may not make a harbour revision order including provision authorising the compulsory acquisition of land unless it also includes provision for the payment of compensation in respect of the acquisition: Harbours Act 1964 s 17(2). In s 17 (as amended) references to 'the Secretary of State' are to be construed, in relation to a fishery harbour in Wales, as references to the Welsh Ministers: s 17(2C) (added by the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(2); and amended by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32). For the meaning of 'fishery harbour' see PARA 612 ante. As to the Welsh Ministers see PARA 604 ante. As to compulsory acquisition see generally COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.

15 Harbours Act 1964 s 14(5) (amended by the Transport and Works Act 1992 Sch 3 para 1(1), (6)).

16 For the meaning of 'footpath' see PARA 628 note 16 ante; for the meaning of 'bridleway' see PARA 628 note 17 ante; and for the meaning of 'restricted byway' see PARA 628 note 18 ante.

17 Harbours Act 1964 s 14(5A) (added by the Transport and Works Act 1992 Sch 3 para 1(1), (7); and amended by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, reg 2, Schedule Pt I).

18 'Ecclesiastical property' means land belonging to an ecclesiastical benefice of the Church of England, or being or forming part of a church subject to the jurisdiction of the bishop of any diocese of the Church of England or the site of a church so subject, or being or forming part of a burial ground so subject: Harbours Act 1964 s 49(5).

19 *Ibid* s 49(3)(a). As to the Church Commissioners see ECCLESIASTICAL LAW. As from a day to be appointed this provision is amended so as to provide for payment to be made, instead of to the Church Commissioners, to the Diocesan Board of Finance for the diocese in which the land is situated: s 49(3)(a) (prospectively amended by the Church of England (Miscellaneous Provisions) Measure 2006 s 14, Sch 5 para 10(a). At the date at which this volume states the law no such day had been appointed.

20 As to severance depreciation see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 810 et seq.

21 The severance or injury arising from the acquisition of land in pursuance of the provision for acquisition included in the order: Harbours Act 1964 s 49(3)(b). As to compensation for injury from works see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 877 et seq.

22 Ibid s 49(3)(b). Any sum which, in pursuance of a provision included in a harbour revision order in compliance with s 49(3), is paid to the Church Commissioners with reference to any land must, if the land is not consecrated, be applied by them for the purposes for which the proceeds of a sale by agreement of the fee simple of the land would be applicable under any enactment or Measure authorising such a sale or disposing of the proceeds of such a sale, and if the land is consecrated, the sum is to be applied by them in such manner as they may determine: s 49(4). As from a day to be appointed this provision is amended so as to provide that any sum which, in pursuance of a provision included in an order in compliance with s 49(3), is paid to the Diocesan Board of Finance for the diocese in which the land is situated with reference to any land must, if the land is not consecrated, be applied by it for the purposes for which the proceeds of a sale by agreement of the fee simple of the land would be applicable under any enactment or Measure authorising such a sale or disposing of the proceeds of such a sale, and, if the land is consecrated, be applied by it in such manner as it may determine as if the land had been sold under the Pastoral Measure 1983: Harbours Act 1964 s 49(4) (prospectively amended by the Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 10(a)). At the date at which this volume states the law no such day had been appointed.

23 'Crown or duchy interest' means an interest belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall, or belonging to a government department or held in trust for Her Majesty for the purposes of a government department: Harbours Act 1964 s 52(2).

24 The acquired compulsorily by virtue of the Harbours Act 1964.

25 The reference in ibid s 52(1) to a harbour revision order is to be construed as including a reference to a harbour reorganisation scheme (see PARA 648 et seq post): Docks and Harbours Act 1966 s 42(4)(b).

26 Harbours Act 1964 s 52(1). 'The appropriate authority' in relation to any land: (1) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners; (2) in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of that land; (3) in relation to land belonging to Her Majesty in right of Her private estates means a person appointed by Her Majesty in writing under the royal sign manual or, if no such appointment is made, the Secretary of State; (4) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy; (5) in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; (6) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department; (7) in relation to Westminster Hall and the Chapel of St Mary Undercroft, means the Lord Great Chamberlain and the Speakers of the House of Lords and the House of Commons acting jointly; (8) in relation to Her Majesty's Robing Room in the Palace of Westminster, the adjoining staircase and ante-room and the Royal Gallery, means the Lord Great Chamberlain: Town and Country Planning Act 1990 s 293(2) (amended by the Planning and Compulsory Purchase Act 2004 s 79(4), Sch 3 para 6(1), (3), (4)); definition applied by the Harbours Act 1964 s 52(2) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 11). As to the Crown Estate see CROWN PROPERTY vol 12(1) (Reissue) PARA 278 et seq; and as to the Crown Estate Commissioners see CROWN PROPERTY vol 12(1) (Reissue) PARA 280. If any question arises as to what authority is the appropriate authority in relation to any land, that question must be referred to the Treasury, whose decision is final: Town and Country Planning Act 1990 s 293(3); provision applied by the Harbours Act 1964 s 52(2) (as so amended). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

27 For the purposes of works in pursuance of a harbour revision order and works authorised by a harbour empowerment order (see PARA 645 et seq post), paragraph 23 of the electronic communications code (which provides a procedure for certain cases where works involve the alteration of electronic communication apparatus) applies to a person authorised to execute those works: Harbours Act 1964 s 53 (substituted by the Telecommunications Act 1984 s 109(1), Sch 4 para 43; and amended by the Communications Act 2003 s 406(1), Sch 17 para 30). For the meaning of 'electronic communications code' see TELECOMMUNICATIONS vol 97 (2010) PARA 151; and for the meaning of 'electronic communications apparatus' see TELECOMMUNICATIONS vol 97 (2010) PARA 163. The reference in the Harbours Act 1964 s 53 (as substituted and amended) to a harbour revision order is to be construed as including a reference to a harbour reorganisation scheme (see PARA 648 et seq post): Docks and Harbours Act 1966 s 42(4)(b).

UPDATE

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/5. HARBOUR ORDERS AND SCHEMES/(1) HARBOUR REVISION ORDERS/(i) In general/630. Preconditions for the making of harbour revision orders.

630. Preconditions for the making of harbour revision orders.

In general¹, a harbour revision order² may not be made in relation to a harbour³ except upon written⁴ application for that purpose made to the Secretary of State⁵ by the authority⁶ engaged in improving, maintaining or managing it or by a person⁷ appearing to him to have a substantial interest or by a body representative of persons appearing to him to have such an interest⁸. Nor may such an order be made unless the Secretary of State is satisfied that the making of the order is desirable in the interest of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods⁹ or passengers by sea or in the interests of the recreational use of sea-going ships¹⁰.

Where it is proposed to make a harbour revision order, the Secretary of State must consider whether any person who is, or but for any national service¹¹ of his would be, the holder of any situation, place or employment with a person or body subject to any of the provisions of the order might, if it were made, suffer any loss of employment or loss or diminution of emoluments or pension rights in consequence of any of the provisions of the order¹². If it appears to the Secretary of State that such a person who is or would be the holder of such a situation, place or employment might suffer any such loss or diminution¹³ and that, if he does, compensation should be paid in respect of it, the Secretary of State may not make the order unless he is satisfied that it secures that compensation¹⁴ will be paid to or in respect of that person if he suffers any such loss or diminution¹⁵.

The Secretary of State¹⁶ may not make a harbour revision order which provides for extinguishing a public right of way over a footpath, bridleway or restricted byway¹⁷ unless he is satisfied: (1) that an alternative right of way has been or will be provided¹⁸; or (2) that the provision of an alternative right of way is not required¹⁹. Nor may the Secretary of State make a harbour revision order which provides for diverting a public right of way over a footpath, bridleway or restricted byway unless he is satisfied that the path or way will not be substantially less convenient to the public in consequence of the diversion²⁰.

1 le subject to the provisions of the Harbours Act 1964 s 15 (as amended): see PARA 631 post.

2 For the meaning of 'harbour revision order' see PARA 628 ante. As to the contents of a harbour revision order see PARA 629 ante. As to the procedure on application for the order see PARA 632 et seq post.

3 For the meaning of 'harbour' see PARA 611 ante. See also PARA 628 note 2 ante.

4 For the meaning of 'written' see PARA 605 note 3 ante.

5 As to the Secretary of State see PARA 603 ante; and see PARA 628 note 1 ante.

6 For the meaning of 'harbour authority' see PARA 619 ante.

7 For the meaning of 'person' see PARA 605 note 4 ante.

8 Harbours Act 1964 s 14(2)(a).

9 For the meaning of 'goods' see PARA 611 note 5 ante.

10 Harbours Act 1964 s 14(2)(b) (amended by the Transport and Works Act 1992 s 63(1), Sch 3 para 1(1), (2)). For the meaning of 'ship' see PARA 611 note 2 ante.

The Harbours Act 1964 s 14(2)(b) (as amended) does not apply to an order in so far as it is made for objects mentioned in s 14(2A) (as added) (see PARA 628 ante): s 14(2A) (added by the Transport Act 1981 s 18, Sch 6). Nothing in the Harbours Act 1964 s 14(2)(b) (as amended) prevents the making of an order for facilitating: (1) the closing of part of the harbour; (2) a reduction in the facilities available in the harbour; or (3) the disposal of property not required for the purposes of the harbour, if (in any of these cases) the Secretary of State is satisfied that the making of the order is desirable on grounds other than those specified in that provision: s 14(2B) (added by the Transport and Works Act 1992 Sch 3 para 1(1), (3)).

Notwithstanding anything in the Harbours Act 1964 s 14(2)(b) (as amended), a harbour revision order may be made if the Secretary of State proposing to make it is satisfied that the making of the order is desirable in the interests of securing the efficient operation of a depot for the sorting of goods which are to be loaded or have been unloaded in the harbour to which the order relates and that there has been such an application for the order as is mentioned in s 14(2)(a) (see the text to notes 1-8 supra): Docks and Harbours Act 1966 s 36(2).

11 'National service' means any such service in any of Her Majesty's forces or other employment (whether or not in the service of Her Majesty) as may be prescribed by regulations under the Harbours Act 1964 s 19(1) (see PARA 653 post): s 19(5). As to the service which has been prescribed see the Harbour Reorganisation (Compensation to Employees) Regulations 1967, SI 1967/1889.

12 See the Harbours Act 1964 s 19(2).

13 Ie in consequence of any of the provisions of the order: see *ibid* s 19(2).

14 The compensation must correspond, as near as may be, to that payable by virtue of regulations made under *ibid* s 19(1) (see PARA 653 post), to or in respect of the holder in similar circumstances of a similar situation, place or employment, in respect of a similar loss or diminution suffered in consequence of any of the provisions of a harbour reorganisation scheme: s 19(2). As to compensation in the case of harbour reorganisation schemes see PARA 653 post.

15 *Ibid* s 19(2).

16 In *ibid* s 17 (as amended) references to 'the Secretary of State' are to be construed, in relation to a fishery harbour in Wales, as references to the Welsh Ministers: s 17(2C) (added by the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(2); and amended by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32). For the meaning of 'fishery harbour' see PARA 612 ante. As to the Welsh Ministers see PARA 604 ante.

17 For the meaning of 'footpath' see PARA 628 note 16 ante; for the meaning of 'bridleway' see PARA 628 note 17 ante; and for the meaning of 'restricted byway' see PARA 628 note 18 ante.

18 Harbours Act 1964 s 17(2A)(a) (s 17(2A), (2B) added by the Transport and Works Act 1992 s 63(1), Sch 3 para 3; and amended by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, reg 2, Schedule Pt I).

19 Harbours Act 1964 s 17(2A)(b) (as added and amended: see note 18 supra).

20 *Ibid* s 17(2B) (as added and amended: see note 18 supra).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/5. HARBOUR ORDERS AND SCHEMES/(1) HARBOUR REVISION ORDERS/(i) In general/631. Secretary of State's power to make harbour revision orders of his own motion.

631. Secretary of State's power to make harbour revision orders of his own motion.

If, with respect to a harbour¹, the Secretary of State² is satisfied that a harbour revision order³ ought to be made for the purpose of achieving, in relation to the harbour, either or both of the objects mentioned in heads (1) and (2) below, he may make the order despite the fact that no application to him⁴ for the making of it is forthcoming⁵. However, he must be satisfied⁶ that the making of the order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner, or of facilitating the efficient and economic transport of goods⁷ or passengers by sea, or of the recreational use of sea-going ships⁸.

The objects are: (1) reconstituting the harbour authority⁹ by which the harbour is being improved, maintained or managed or altering its constitution¹⁰; (2) regulating, in whole or to a less extent, the procedure of the authority or of any of its committees and fixing the quorum at a meeting of the authority or of any of its committees¹¹.

1 For the meaning of 'harbour' see PARA 611 ante.

2 The Harbours Act 1964 refers to 'the appropriate minister', but this now means the Secretary of State: see s 15(3). This provision originally vested the functions in relation to a harbour not being a fishery harbour in 'the minister', being the Minister of Transport (see s 57(1)), and the functions in relation to a fishery harbour in the Minister of Agriculture, Fisheries and Food. As to the devolution of such functions to the Secretary of State, and as to the Secretary of State, see PARA 603 ante. In relation to Wales, all functions of a Minister of the Crown under the Harbours Act 1964 s 15 (as amended) relating to fishery harbours are transferred to the Welsh Ministers: see PARA 604 ante. For the meaning of 'fishery harbour' see PARA 612 ante.

3 For the meaning of 'harbour revision order' see PARA 628 ante.

4 Ie no application from the authority engaged in improving, maintaining or managing the harbour or from any such person or representative body as is mentioned in the Harbours Act 1964 s 14(2)(a): see PARA 630 ante.

5 Ibid s 15(1). As to the procedure for making such orders see PARA 640 et seq post.

6 Ie he must be satisfied as mentioned in ibid s 14(2)(b) (as amended): see PARA 630 ante.

7 For the meaning of 'goods' see PARA 611 note 5 ante.

8 See the Harbours Act 1964 s 15(1). For the meaning of 'ship' see PARA 611 note 2 ante.

9 For the meaning of 'harbour authority' see PARA 619 ante.

10 Harbours Act 1964 s 15(1)(a).

11 Ibid s 15(1)(b).

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/5. HARBOUR ORDERS AND SCHEMES/(1) HARBOUR REVISION ORDERS/(ii) Procedure for Orders on Application to the Secretary of State/632. Pre-application procedure.

(ii) Procedure for Orders on Application to the Secretary of State

632. Pre-application procedure.

A person¹ may not make an application for a harbour revision order² which, directly or indirectly, authorises any project³ unless he has given the Secretary of State⁴ notice⁵ of his intention to make the application⁶, and the Secretary of State has responded⁷ to it⁸.

Where the Secretary of State is notified of a proposed application he must decide: (1) whether the application relates to a project which falls within Annex I or II to the Directive⁹ on the assessment of the effects of certain public and private projects on the environment¹⁰; and (2) if it relates to a project which falls within Annex II¹¹, whether, taking into account the selection criteria¹², the project is a relevant project¹³.

If the Secretary of State decides that the application does not relate to a project which falls within Annex I or II to the Directive¹⁴, or relates to a project which falls within Annex II but is not a relevant project¹⁵, he must inform the proposed applicant in writing¹⁶ of his decision¹⁷.

If the Secretary of State decides that the application relates to a project which falls within Annex I or within Annex II to the Directive and is a relevant project he must in writing inform the proposed applicant of the decision, and give him the reasons for his decision¹⁸. The Secretary of State must also give an opinion to the proposed applicant about the extent of the information¹⁹ which the proposed applicant would be required²⁰ to supply in an environmental statement²¹; but he must not give such an opinion until he has consulted the proposed applicant and such bodies with environmental responsibilities as he thinks appropriate²².

If the applicant makes the application, he must supply²³ an environmental statement²⁴.

1 For the meaning of 'person' see PARA 605 note 4 ante.

2 For the meaning of 'harbour revision order' see PARA 628 ante.

3 'Project' means: (1) the execution of construction works or other installations or schemes; and (2) other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources: Harbours Act 1964 s 17(1)(a) (amended by the Transport Act 1981 s 15, Sch 5 Pt I; and the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(1)(b)); Harbours Act 1964 Sch 3 para 1 (Sch 3 paras 1-25 substituted by the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(4), Sch 3).

4 As to the Secretary of State see PARA 603 ante; and see PARA 628 note 1 ante. As to the transfer to the Welsh Ministers of functions so far as they relate to fishery harbours in Wales see PARA 604 ante.

5 As to the giving of notice see PARA 761 post.

6 Harbours Act 1964 Sch 3 para 3(a) (as substituted: see note 3 supra).

7 le under ibid Sch 3 para 5 (as substituted) (see the text to notes 14-17 infra) or Sch 3 para 6(3) (as substituted) (see note 21 infra).

8 Ibid Sch 3 para 3(b) (as substituted: see note 3 supra).

9 le EC Council Directive 85/337 (OJ L175, 5.7.1985, p 40), as amended by EC Council Directive 97/11 (OJ L73, 14.3.1997, p 5): Harbours Act 1964 Sch 3 para 1 (as substituted: see note 3 supra).

10 Ibid Sch 3 para 4(a) (as substituted: see note 3 supra).

11 For the purposes of ibid Sch 3 paras 1-25 (as substituted), a project is to be treated as not falling within Annex II to the Directive (see note 9 supra) unless: (1) the area of the works comprised in the project exceeds 1 hectare; (2) any part of the works is to be carried out in a sensitive area; or (3) the Secretary of State determines that the project must be treated for those purposes as falling within that Annex: Harbours Act 1964 Sch 3 para 2 (as substituted: see note 3 supra). 'Sensitive area' means any of the following: (a) land within a site of special scientific interest (within the meaning of the Wildlife and Countryside Act 1981: see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 674); (b) land declared to be a national nature reserve under the Wildlife and Countryside Act 1981 s 35 (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 674); (c) an area to which the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10 Table para (u)(ii) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 475) applies; (d) a national park within the meaning of the National Parks and Access to the Countryside Act 1949 (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 636); (e) the Broads within the meaning of the Norfolk and Suffolk Broads Act 1988 (see WATER AND WATERWAYS vol 101 (2009) PARA 735); (f) a property appearing on the World Heritage List kept under the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage (Cmnd 9424) art 11(2); (g) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979 (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1010 et seq); (h) an area of outstanding natural beauty designated by order under the Countryside and Rights of Way Act 2000 s 82 (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 658); (i) a European site within the meaning of the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 10 (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 729): Harbours Act 1964 Sch 3 para 1 (as so substituted). For the meaning of 'land' see PARA 605 note 8 ante.

12 'Selection criteria' means the criteria set out in Annex III to the Directive (see note 9 supra): Harbours Act 1964 Sch 3 para 1 (as substituted: see note 3 supra).

13 Ibid Sch 3 para 4(b) (as substituted: see note 3 supra). 'Relevant project' means a project which would be likely to have significant effects on the environment by virtue of factors such as its nature, size or location: Sch 3 para 1 (as so substituted).

14 Ibid Sch 3 para 5(a) (as substituted: see note 3 supra).

15 Ibid Sch 3 para 5(b) (as substituted: see note 3 supra).

16 For the meaning of 'writing' see PARA 605 note 3 ante.

17 Harbours Act 1964 Sch 3 para 5 (as substituted: see note 3 supra).

18 Ibid Sch 3 para 6(1)(a) (as substituted: see note 3 supra).

19 le the information referred to in Annex IV to the Directive (see note 9 supra).

20 le under the Harbours Act 1964 Sch 3 para 8(1) (as substituted): see PARA 633 post.

21 Ibid Sch 3 para 6(1)(b), (2) (as substituted: see note 3 supra). In giving such an opinion, the Secretary of State must take into account the extent to which he considers: (1) information to be relevant to his decision under Sch 3 para 19 (as substituted) (see PARA 637 post) and to the specific characteristics of the project to which the proposed application relates and of the environmental features likely to be affected by it (Sch 3 para 6(3)(a) (as so substituted)); and (2) that (having regard in particular to current knowledge and methods of assessment) the proposed applicant may reasonably be required to compile the information (Sch 3 para 6(3)(b) (as so substituted)). For the meaning of 'environmental statement' see PARA 633 note 8 post.

22 Ibid Sch 3 para 6(4) (as substituted: see note 3 supra).

23 le in accordance with ibid Sch 3 para 8 (as substituted): see PARA 633 post.

24 See ibid Sch 3 para 6(1)(c) (as substituted: see note 3 supra).

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

632 Pre-application procedure

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/5. HARBOUR ORDERS AND SCHEMES/(1) HARBOUR REVISION ORDERS/(ii) Procedure for Orders on Application to the Secretary of State/633. The application.

633. The application.

An application for a harbour revision order¹ must be accompanied by six copies of a draft of the proposed order², six copies of any map which, if the order is made in the form of the draft, will be annexed to it³, and such fee as the Secretary of State⁴ may determine⁵.

If the Secretary of State has decided⁶ that the application relates to a project which falls within Annex I or within Annex II to the Directive⁷ on the assessment of the effects of certain public and private projects on the environment and is a relevant project, he must direct the applicant to supply him with an environmental statement⁸ in such form as he may specify⁹. The environmental statement must include the following information:

- 37 (1) a description of the project¹⁰ comprising information on its site, design and size¹¹;
- 38 (2) a description of the measures which the applicant proposes to take in order to prevent, reduce or remedy significant adverse effects¹²;
- 39 (3) data required to identify and assess the main effects which the project is likely to have on the environment¹³;
- 40 (4) an outline of the main alternatives studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effects¹⁴; and
- 41 (5) a non-technical summary of the information mentioned in heads (1) to (4) above¹⁵.

The Secretary of State may require the applicant to include in the environmental statement specified information¹⁶ in addition to the information listed in heads (1) to (5) above¹⁷.

The Secretary of State must not consider an application for a harbour revision order unless the applicant complies with any direction¹⁸ to supply an environmental statement and with any relevant requirements of the provisions¹⁹ relating to notices²⁰.

1 For the meaning of 'harbour revision order' see PARA 628 ante. As to the pre-application procedure see PARA 632 ante.

2 Harbours Act 1964 s 17(1)(a) (amended by the Transport Act 1981 s 15, Sch 5 Pt I; and the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(1)(b)); Harbours Act 1964 Sch 3 para 7(1) (Sch 3 paras 1-25 substituted by the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(4), Sch 3). As to the objects of harbour revision orders see PARA 628 ante; as to the contents of such orders see PARA 629 ante; and as to the preconditions for the making of orders see PARA 630 ante.

3 Harbours Act 1964 Sch 3 para 7(1)(b) (as substituted: see note 2 supra).

4 As to the Secretary of State see PARA 603 ante; and see PARA 628 note 1 ante. As to the transfer to the Welsh Ministers of functions so far as they relate to fishery harbours in Wales see PARA 604 ante.

5 Harbours Act 1964 Sch 3 para 7(1)(c) (as substituted: see note 2 supra).

6 *Ie* pursuant to *ibid* Sch 3 para 6(1) (as substituted): see PARA 632 ante.

7 *Ie* EC Council Directive 85/337 (OJ L175, 5.7.1985, p 40), as amended by EC Council Directive 97/11 (OJ L73, 14.3.1997, p 5); Harbours Act 1964 Sch 3 para 1 (as substituted: see note 2 supra).

8 'Environmental statement' means a statement which includes the information mentioned in *ibid* Sch 3 para 8(2) (as substituted) (see the text to notes 10-15 *infra*) and such additional information as the Secretary of State may require under Sch 3 para 8(3) (as substituted) (see the text to notes 16-17 *infra*): Sch 3 para 1 (as substituted: see note 2 supra).

9 *Ibid* Sch 3 para 8(1) (as substituted: see note 2 supra).

10 For the meaning of 'project' see PARA 632 note 3 ante.

11 Harbours Act 1964 Sch 3 para 8(2)(a) (as substituted: see note 2 supra).

12 *Ibid* Sch 3 para 8(2)(b) (as substituted: see note 2 supra).

13 *Ibid* Sch 3 para 8(2)(c) (as substituted: see note 2 supra).

14 *Ibid* Sch 3 para 8(2)(d) (as substituted: see note 2 supra).

15 *Ibid* Sch 3 para 8(2)(e) (as substituted: see note 2 supra).

16 *Ie* whether or not specified in the opinion given under *ibid* Sch 3 para 6(2) (as substituted): see PARA 632 ante.

17 *Ibid* Sch 3 para 8(3) (as substituted: see note 2 supra). The Secretary of State may specify information under Sch 3 para 8(3) (as substituted) only if it is information of a type set out in Annex IV to the Directive (see note 7 supra) and he considers that: (1) it is relevant to his decision under the Harbours Act 1964 Sch 3 para 19 (as substituted) (see PARA 637 post) and to the specific characteristics of the project to which the application relates and of the environmental features likely to be affected by it (Sch 3 para 8(4)(a) (as so substituted)); and (2) (having regard in particular to current knowledge and methods of assessment) the applicant may reasonably be required to compile the information (Sch 3 para 8(4)(b) (as so substituted)).

18 *Ie* under *ibid* Sch 3 para 8(1) (as substituted): see the text to notes 6-9 supra.

19 *Ie* *ibid* Sch 3 paras 10-14 (as substituted): see PARA 634 post.

20 *Ibid* Sch 3 para 9 (as substituted: see note 2 supra).

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/5. HARBOUR ORDERS AND SCHEMES/(1) HARBOUR REVISION ORDERS/(ii) Procedure for Orders on Application to the Secretary of State/634. Notices.

634. Notices.

An applicant for a harbour revision order¹ must arrange for a notice² to be published by Gazette and local advertisement³, and in such other ways as the Secretary of State may direct⁴. If the order will authorise the compulsory acquisition of land⁵ the applicant must, in respect of each parcel of land, serve a notice⁶ on every owner⁷, lessee and occupier other than a tenant for a month or any period less than a month⁸. If the order will result in the extinguishment or diversion of a public right of way over a footpath⁹, bridleway¹⁰ or restricted byway¹¹, the applicant must serve a notice on every local authority¹² for the area in which the footpath, bridleway or restricted byway is situated¹³, and cause a copy of the notice to be displayed in a prominent position at each end of the part of the footpath, bridleway or restricted byway which would by virtue of the order cease to be subject to the public right of way¹⁴.

If the applicant is not the harbour authority¹⁵, the applicant must serve on that authority a copy of the draft order and of any map accompanying the application¹⁶ together with a notice stating that the application has been made to the Secretary of State¹⁷, and that if the authority wishes to object to the application it should do so in writing to the Secretary of State, specifying the grounds of its objection, before the expiry of the period of 42 days starting with the date on which the notice is served on it¹⁸. The Secretary of State may require the applicant to serve on any specified person within any specified period of time the documents required to be served¹⁹ under this provision²⁰.

1 For the meaning of 'harbour revision order' see PARA 628 ante. As to applications for harbour revision orders see PARA 633 ante.

2 The notice must: (1) state that an application has been made for the order; (2) state the Secretary of State's decision under the Harbours Act 1964 Sch 3 para 4 (as substituted) (see PARA 632 ante) and any reasons given under Sch 3 para 6(1) (as substituted) (see PARA 632 ante); (3) state whether an environmental statement has been supplied under Sch 3 para 8(1) (as substituted) (see PARA 633 ante); (4) contain a concise summary of the draft order; (5) give a general description of any land proposed for compulsory acquisition and of the nature of any works proposed to be authorised; and (6) state that any person who desires to object to the application should do so in writing to the Secretary of State, specifying the grounds of the objection, before the expiry of the period of 42 days starting with a date specified in the notice, being the date on which the notice first appears in a local newspaper: s 17(1)(a) (amended by the Transport Act 1981 s 15, Sch 5 Pt I; and the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(1)(b)); Harbours Act 1964 Sch 3 para 10(2), (3) (Sch 3 paras 1-25 substituted by the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(4), Sch 3). As to the Secretary of State see PARA 603 ante; and see PARA 628 note 1 ante. As to the transfer to the Welsh Ministers of functions so far as they relate to fishery harbours in Wales see PARA 604 ante. For the meaning of 'person' see PARA 605 note 4 ante. For the meaning of 'writing' see PARA 605 note 3 ante. As to the procedure in respect of objections made see PARA 636 post.

The notice must also specify a place where copies of the following documents can be inspected at all reasonable hours: (a) the draft order; (b) the decision of the Secretary of State referred to in head (2) above; (c) any environmental statement supplied under Sch 3 para 8(1) (as substituted); and (d) any map accompanying

the application, the copy of the map being drawn to the same scale as that map: Sch 3 para 10(4), (5) (as so substituted).

3 Ibid Sch 3 para 10(1)(a) (as substituted: see note 2 supra). 'Gazette and local advertisement' means, in relation to an application, proposed order, order or scheme relating to a harbour or group of harbours, publication in the London Gazette and, in each of two successive weeks, in one or more local newspapers circulating in the locality where the harbour or group is situated: s 57(1). For the meaning of 'harbour' see PARA 611 ante.

4 Ibid Sch 3 para 10(1)(b) (as substituted: see note 2 supra).

5 For the meaning of 'land' see PARA 605 note 8 ante.

6 As to the service of notices see PARA 761 post.

7 'Owner', in relation to any land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion, and includes also a person holding or entitled to the rents and profits of the land under a lease or agreement the unexpired term of which exceeds three years: Harbours Act 1964 s 57(1).

8 Ibid Sch 3 para 11 (as substituted: see note 2 supra). The notice must: (1) state that an application has been made to the Secretary of State for the making of an order which will authorise the compulsory acquisition of the parcel; (2) name a place where a copy of the draft order may be inspected at all reasonable hours; (3) name a place where a copy of any relevant map accompanying the application, drawn to the same scale and delineating the boundaries of the parcel, may be inspected at all reasonable hours; and (4) state that if the person on whom the notice is served wishes to object to the application so far as regards the compulsory acquisition of the parcel he should do so in writing to the Secretary of State, specifying the grounds of his objection, before the expiry of the period of 42 days starting with the date on which the notice is served on him: Sch 3 para 11(a)-(d) (as so substituted). For the purposes of the Harbours Act 1964, in reckoning any period which is therein, or in an order thereunder, expressed to be a period from a given date, that date is excluded: s 50. As to the compulsory acquisition of land generally see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.

9 For the meaning of 'footpath' see PARA 628 note 16 ante.

10 For the meaning of 'bridleway' see PARA 628 note 17 ante.

11 For the meaning of 'restricted byway' see PARA 628 note 18 ante.

12 'Local authority' means: (1) in England, a county council, a district council, a London borough council, the Common Council of the City of London, the Council of the Isles of Scilly, a parish council and a parish meeting of a parish not having a separate parish council (Harbours Act 1964 Sch 3 para 12(3)(a) (as substituted: see note 2 supra)); (2) in Wales, a county council, a county borough council and a community council (Sch 3 para 12(3)(b) (as so substituted)). As to local government areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

13 Ibid Sch 3 para 12(1)(a) (Sch 3 as substituted (see note 2 supra); Sch 3 para 12(1), (2) amended by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, reg 2, Schedule Pt I). The notice must: (1) state that an application has been made to the Secretary of State for the making of an order which will result in the extinguishment or diversion of the public right of way over the footpath, bridleway or restricted byway; (2) name a place where a copy of the draft order may be inspected at all reasonable hours; (3) name a place where a copy of any relevant map accompanying the application, drawn to the same scale, may be inspected at all reasonable hours; and (4) state that any person who desires to object to the application, so far as regards the extinguishment or diversion of the public right of way, should do so in writing to the Secretary of State, specifying the grounds of the objection, before the expiry of the period of 42 days starting with, in the case of a local authority, the date on which the notice is served, or in the case of any other person, the date specified in the notice displayed under Sch 3 para 12(1)(b) (as substituted and amended) (see the text to note 14 infra): Sch 3 para 12(2) (as so substituted and amended).

14 Ibid Sch 3 para 12(1)(b) (as substituted and amended: see note 13 supra). See also note 13 supra.

15 For the meaning of 'harbour authority' see PARA 619 ante.

16 The copy of the map so served must be drawn to the same scale as that map: Harbours Act 1964 Sch 3 para 13(2) (as substituted: see note 2 supra).

17 Ibid Sch 3 para 13(1)(a) (as substituted: see note 2 supra).

18 Ibid Sch 3 para 13(1)(b) (as substituted: see note 2 supra).

19 Ie under ibid Sch 3 para 13: see the text to notes 15-17 supra.

20 Ibid Sch 3 para 14 (as substituted: see note 2 supra).

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

634 Notices

NOTES 2, 4--Harbours Act 1964 Sch 3 para 10(4) amended, para 10A added: SI 2009/269.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/5. HARBOUR ORDERS AND SCHEMES/(1) HARBOUR REVISION ORDERS/(ii) Procedure for Orders on Application to the Secretary of State/635. Consultation.

635. Consultation.

Before the Secretary of State¹ determines an application for a harbour revision order² he must consult³, and send any environmental statement⁴ supplied⁵ to him to⁶, such bodies likely to have an interest in the project⁷ by reason of their environmental responsibilities as he thinks appropriate⁸.

Where:

- 42 (1) an application for a harbour revision order relates to a project which is proposed to be carried out in Great Britain⁹;
- 43 (2) the Secretary of State decides¹⁰ that the application relates to a project which falls within Annex I or II to the Directive¹¹ on the assessment of the effects of certain public and private projects on the environment¹², and in the case of an application relating to a project which falls within Annex II to the Directive, that the project is a relevant project¹³; and
- 44 (3) it comes to the attention of the Secretary of State that the project is likely to have significant effects on the environment in another EEA state¹⁴, or another EEA state requests particulars of the project¹⁵,

the following provisions apply¹⁶.

The Secretary of State must: (a) publish in the London Gazette the specified particulars¹⁷ in a notice with an indication of where further information is available¹⁸; (b) serve¹⁹ on the other EEA state as soon as possible and no later than the date of publication of that notice, the specified particulars and, if he thinks fit, certain other information²⁰; and (c) give the other EEA state a

reasonable time in which to indicate whether it wishes²¹ to be consulted²². The Secretary of State must also arrange for specified information²³ to be made available, within a reasonable time, to the authorities likely to have an interest in the project by reason of their environmental responsibilities, and the public concerned, in the territory of the EEA state concerned²⁴; and ensure that those authorities and the public concerned are given a reasonable opportunity, before he decides whether to make the harbour revision order in relation to the project, to send to the Secretary of State their opinion on the information²⁵.

The Secretary of State must consult the EEA state concerned about the project generally and, in particular, about the potential significant effects of the project on the environment of that EEA state and the measures envisaged to reduce or eliminate such effects²⁶, and endeavour to agree with the EEA state a reasonable period of time for the duration of the consultation period²⁷. Where an EEA state has been so consulted, on the determination of the application the Secretary of State must inform the EEA state of the decision and send it a statement giving prescribed details²⁸.

1 As to the Secretary of State see PARA 603 ante; and see PARA 628 note 1 ante. As to the transfer to the Welsh Ministers of functions so far as they relate to fishery harbours in Wales see PARA 604 ante.

2 For the meaning of 'harbour revision order' see PARA 628 ante. As to applications for harbour revision orders see PARA 633 ante.

3 Harbours Act 1964 s 17(1)(a) (amended by the Transport Act 1981 s 15, Sch 5 Pt I; and the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(1)(b)); Harbours Act 1964 Sch 3 para 15(a) (Sch 3 paras 1-25 substituted by the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(4), Sch 3). As to the duty to consult see JUDICIAL REVIEW vol 61 (2100) PARA 627.

4 For the meaning of 'environmental statement' see PARA 633 note 8 ante.

5 *Ie* under the Harbours Act 1964 Sch 3 para 8(1) (as substituted): see PARA 633 ante.

6 *Ibid* Sch 3 para 15(b) (as substituted: see note 3 supra).

7 For the meaning of 'project' see PARA 632 note 3 ante.

8 Harbours Act 1964 Sch 3 para 15 (as substituted: see note 3 supra).

9 *Ibid* Sch 3 para 16(1)(a) (as substituted: see note 3 supra). For the meaning of 'Great Britain' see PARA 613 note 1 ante.

10 *Ie* under *ibid* Sch 3 para 6(1) (as substituted): see PARA 632 ante.

11 *Ie* EC Council Directive 85/337 (OJ L175, 5.7.1985, p 40), as amended by EC Council Directive 97/11 (OJ L73, 14.3.1997, p 5); Harbours Act 1964 Sch 3 para 1 (as substituted: see note 3 supra).

12 *Ibid* Sch 3 para 16(1)(b)(i) (as substituted: see note 3 supra).

13 *Ibid* Sch 3 para 16(1)(b)(ii) (as substituted: see note 3 supra). For the meaning of 'relevant project' see PARA 632 note 13 ante.

14 'EEA state' means a state which is a contracting party to the EEA Agreement; and 'EEA Agreement' means the Agreement on the European Economic Area (Oporto, 2 May 1992; EC 7 (1992); Cm 2183) as adjusted by the Protocol (Brussels, 17 March 1993; EC 2 (1993); Cm 2183); Harbours Act 1964 Sch 3 para 1 (as substituted: see note 3 supra).

15 *Ibid* Sch 3 para 16(1)(c) (as substituted: see note 3 supra).

16 *Ibid* Sch 3 para 16(1) (as substituted: see note 3 supra).

17 The specified particulars are: (1) a description of the project, together with any available information on its possible significant effects on the environment in the other EEA state (*ibid* Sch 3 para 16(3)(a) (as substituted: see note 3 supra)); and (2) information about the nature of the decision which may be taken under the Harbours Act 1964 Sch 3 paras 1-25 (as substituted) (see PARA 637 post) (Sch 3 para 16(3)(b) (as so substituted)).

18 Ibid Sch 3 para 16(2)(a) (as substituted: see note 3 supra).

19 As to the service of documents see PARA 761 post.

20 Harbours Act 1964 Sch 3 para 16(2)(b) (as substituted: see note 3 supra). The information is that mentioned in Sch 3 para 16(4) (as substituted): see note 22 infra.

21 Ie in accordance with ibid Sch 3 para 16(6) (as substituted): see the text to notes 26-27 infra.

22 Ibid Sch 3 para 16(2)(c) (as substituted: see note 3 supra). The information to be served on an EEA state which indicates that it wishes to be consulted is:

8 (1) a copy of the application;

9 (2) the environmental statement supplied to the Secretary of State under Sch 3 para 8(1) (as substituted) (see PARA 633 ante); and

10 (3) information regarding the procedure under Sch 3 paras 1-25 (as substituted),

but only to the extent that such information has not already been provided to the EEA state in accordance with Sch 3 para 16(2)(a) (as substituted) (see the text to notes 17-18 supra): Sch 3 para 16(4) (as so substituted).

23 Ie the information referred to in ibid Sch 3 para 16(3), (4) (as substituted): see notes 17, 22 supra.

24 Ibid Sch 3 para 16(5)(a) (as substituted: see note 3 supra).

25 Ibid Sch 3 para 16(5)(b) (as substituted: see note 3 supra).

26 Ibid Sch 3 para 16(6)(a) (as substituted: see note 3 supra).

27 Ibid Sch 3 para 16(6)(b) (as substituted: see note 3 supra).

28 Ibid Sch 3 para 16(7) (as substituted: see note 3 supra). The statement must give: (1) the content of the decision whether or not to make the order and any conditions attached to the decision (Sch 3 para 16(7)(a) (as so substituted)); (2) the main reasons and considerations on which the decision is based (Sch 3 para 16(7)(b) (as so substituted)); (3) a description, where necessary, of the main measures to prevent, reduce or offset the major adverse effects (Sch 3 para 16(7)(c) (as so substituted)); and (4) confirmation that any opinion sent to the Secretary of State in accordance with Sch 3 para 16(5)(b) (as substituted) (see the text to note 25 supra) has been taken into consideration in reaching the decision (Sch 3 para 16(7)(d) (as so substituted)).

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

635 Consultation

NOTES 6, 28--Harbours Act 1964 Sch 3 para 15(b) amended, para 16(7)(ba) added: SI 2009/269.

636. Objections.

The following provisions¹ have effect where:

- 45 (1) all relevant notices concerning an application for the making of a harbour revision order² have been³ published⁴;
- 46 (2) all notices and other documents which are required to be served⁵ have been served⁶; and
- 47 (3) every period for the making of objections to the Secretary of State⁷ in respect of the application has expired⁸.

If an objection to the application was made to the Secretary of State and has not been withdrawn, then unless the Secretary of State decides that the application must not proceed further:

- 48 (a) in the case of an objection regarding compulsory acquisition of a parcel of land⁹, he must either cause an inquiry to be held or allow the objector to appear before and be heard by a person appointed by the Secretary of State¹⁰; and
- 49 (b) in the case of any other objection, he must cause an inquiry to be held unless he considers the objection frivolous or too trivial to warrant the holding of an inquiry¹¹.

The Secretary of State may disregard an objection if it does not specify the grounds on which it is made¹² or, in the case of an objection about compulsory acquisition, if he is satisfied that the objection relates exclusively to matters which can be dealt with by the tribunal by whom compensation in respect of the acquisition will fall to be assessed in default of agreement¹³.

1 Ie the Harbours Act 1964 s 17(1)(a) (as amended), Sch 3 para 18 (as substituted) (see *infra*), Sch 3 paras 19-20 (as substituted) (see PARA 637 *post*), Sch 3 paras 21-24 (as substituted) (see PARA 638 *post*).

2 For the meaning of 'harbour revision order' see PARA 628 *ante*. As to applications for harbour revision orders see PARA 630 *ante*.

3 Ie under the Harbours Act 1964 Sch 3 para 10(1) (as substituted) (see PARA 634 *ante*) or Sch 3 para 16(2) (a) (as substituted) (see PARA 635 *ante*).

4 Ibid s 17(1)(a) (amended by the Transport Act 1981 s 15, Sch 5 Pt I; and the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(1)(b)); Harbours Act 1964 Sch 3 para 17(a) (Sch 3 paras 1-25 substituted by the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(4), Sch 3).

5 Ie under the Harbours Act 1964 Sch 3 paras 11, 12(1), 13(1), 14 (as substituted) (see PARA 634 *ante*) or Sch 3 para 16(2)(b) (as substituted) (see PARA 635 *ante*).

6 Ibid Sch 3 para 17(b) (as substituted: see note 4 *supra*).

7 As to the Secretary of State see PARA 603 *ante*; and see PARA 628 note 1 *ante*. As to the transfer to the Welsh Ministers of functions so far as they relate to fishery harbours in Wales see PARA 604 *ante*.

8 Harbours Act 1964 Sch 3 para 17(c) (as substituted: see note 4 *supra*).

9 For the meaning of 'land' see PARA 605 note 8 *ante*.

10 Harbours Act 1964 Sch 3 para 18(1)(a) (as substituted: see note 4 *supra*). Where an objector is heard in accordance with Sch 3 para 18(1)(a) (as substituted), the Secretary of State must allow the applicant and such other persons as he thinks appropriate to be heard on the same occasion: Sch 3 para 18(2) (as so substituted).

For the meaning of 'person' see PARA 605 note 4 ante. As to the provisions governing such inquiries see PARA 760 post.

11 Ibid Sch 3 para 18(1)(b) (as substituted: see note 4 supra).

12 Ibid Sch 3 para 18(3)(a) (as substituted: see note 4 supra).

13 Ibid Sch 3 para 18(3)(b) (as substituted: see note 4 supra). As to the compulsory acquisition of land generally see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

636 Objections

NOTE 8--Harbours Act 1964 Sch 3 para 17(c) amended: SI 2009/269.

TEXT AND NOTES 10-13--Harbours Act 1964 Sch 3 para 18 amended and repealed in part: Marine and Coastal Access Act 2009 Sch 21 para 5, Sch 22 Pt 8. See further Marine and Coastal Access Act 2009 Sch 21 para 7.

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637. The decision.

The Secretary of State¹ must consider:

- 50 (1) any environmental statement supplied² to him³;
- 51 (2) the result⁴ of any consultations⁵;
- 52 (3) any opinion sent⁶ and the result of any consultations⁷ with other EEA states⁸;
- 53 (4) any objections made and not withdrawn⁹; and
- 54 (5) the report¹⁰ of any person who held an inquiry and of any person appointed for the purpose of hearing an objector¹¹.

Following such consideration the Secretary of State must decide: (a) not to make the harbour revision order¹² applied for¹³; (b) to make it in the form of the draft submitted to him¹⁴; or (c) to make it with modifications¹⁵.

Where the Secretary of State decides¹⁶ that the application relates to a project which falls within Annex I or II to the Directive¹⁷ on the assessment of the effects of certain public and private projects on the environment¹⁸, and in the case of an application relating to a project which falls within Annex II to the Directive, that the project¹⁹ is a relevant project²⁰, he must publish the following information:

- 55 (i) the content of the decision whether or not to make the order and any conditions attached to the decision²¹;
- 56 (ii) the main reasons and considerations on which his decision is based²²;
- 57 (iii) a description, where necessary, of the main measures to prevent, reduce or offset the major adverse effects²³; and
- 58 (iv) a statement that the matters referred to heads (1) to (5) above have been taken into consideration²⁴.

1 As to the Secretary of State see PARA 603 ante; and see PARA 628 note 1 ante. As to the transfer to the Welsh Ministers of functions so far as they relate to fishery harbours in Wales see PARA 604 ante.

2 Ie under the Harbours Act 1964 s 17(1)(a) (as amended), Sch 3 para 8(1) (as substituted): see PARA 633 ante. For the meaning of 'environmental statement' see PARA 633 note 8 ante.

3 Ibid s 17(1)(a) (amended by the Transport Act 1981 s 15, Sch 5 Pt I; and the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(1)(b)); Harbours Act 1964 Sch 3 para 19(1)(a) (Sch 3 paras 1-25 substituted by the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(4), Sch 3). As to the application of the Harbours Act 1964 Sch 3 paras 19-20 (as substituted) see Sch 3 para 17 (as substituted); and PARA 636 ante.

4 Ie under ibid Sch 3 para 15 (as substituted): see PARA 635 ante.

5 Ibid Sch 3 para 19(1)(b) (as substituted: see note 3 supra).

6 Ie under ibid Sch 3 para 16(5)(b) (as substituted): see PARA 635 ante.

7 Ie under ibid Sch 3 para 16(6)(a) (as substituted): see PARA 635 ante.

8 Ibid Sch 3 para 19(1)(c) (as substituted: see note 3 supra). For the meaning of 'EEA state' see PARA 635 note 14 ante.

9 Ibid Sch 3 para 19(1)(d) (as substituted: see note 3 supra).

10 Ie under ibid Sch 3 para 18 (as substituted): see PARA 636 ante.

11 Ibid Sch 3 para 19(1)(e) (as substituted: see note 3 supra).

12 For the meaning of 'harbour revision order' see PARA 628 ante. As to applications for harbour revision orders see PARA 630 ante.

13 Harbours Act 1964 Sch 3 para 19(2)(a) (as substituted: see note 3 supra).

14 Ibid Sch 3 para 19(2)(b) (as substituted: see note 3 supra). As to the right to challenge orders see PARA 655 post.

15 Ibid Sch 3 para 19(2)(c) (as substituted: see note 3 supra).

16 Ie under ibid Sch 3 para 6(1) (as substituted): see PARA 632 ante.

17 Ie EC Council Directive 85/337 (OJ L175, 5.7.1985, p 40), as amended by EC Council Directive 97/11 (OJ L73, 14.3.1997, p 5): Harbours Act 1964 Sch 3 para 1 (as substituted: see note 3 supra).

18 Ibid Sch 3 para 20(1)(a) (as substituted: see note 3 supra).

19 For the meaning of 'project' see PARA 632 note 3 ante.

20 Harbours Act 1964 Sch 3 para 20(1)(b) (as substituted: see note 3 supra). For the meaning of 'relevant project' see PARA 632 note 13 ante.

21 Ibid Sch 3 para 20(2)(a) (as substituted: see note 3 supra).

22 Ibid Sch 3 para 20(2)(b) (as substituted: see note 3 supra).

23 Ibid Sch 3 para 20(2)(c) (as substituted: see note 3 supra).

24 Ibid Sch 3 para 20(2)(d) (as substituted: see note 3 supra).

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

637 The decision

NOTE 9--Harbours Act 1964 Sch 3 para 19(1)(da) added: SI 2009/269.

NOTE 15--See Harbours Act 1964 Sch 3 para 10A; and PARA 634.

NOTES 21-24--Harbours Act 1964 Sch 3 para 20(2) amended: SI 2009/269.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/5. HARBOUR ORDERS AND SCHEMES/(1) HARBOUR REVISION ORDERS/(ii) Procedure for Orders on Application to the Secretary of State/638. The order.

638. The order.

Where the Secretary of State¹ proposes to make the harbour revision order² applied for with modifications which appear to him substantially to affect the character of the order, he must take such steps as appear to him to be sufficient and reasonably practicable for informing the applicant and other persons³ likely to be concerned⁴; and he must not make the order until such period for consideration of, and comment upon, the proposed modifications by the applicant and those other persons as he thinks reasonable has expired⁵. The Secretary of State must not make the order with a modification authorising the compulsory acquisition of land⁶ that was not described in the draft submitted to him as land subject to be acquired compulsorily, unless all persons interested consent⁷.

Where the Secretary of State makes an order which authorises the compulsory purchase of land which is a harbour revision order relating to a harbour⁸ in England or Wales⁹, or a harbour empowerment order¹⁰ relating to a harbour or to works to be carried out in England or Wales¹¹, the order is subject to special parliamentary procedure¹².

As soon as possible after a harbour revision order has been made, the applicant must: (1) publish a notice by Gazette and local advertisement¹³; (2) serve¹⁴ on the harbour authority¹⁵ (unless the applicant is the harbour authority) a copy of the order and a copy of any map annexed to it¹⁶; (3) serve a copy of the order and of any map annexed to it on each local authority on whom¹⁷ a notice was served¹⁸; and (4) serve a copy of the order and of any map annexed to it on each person on whom¹⁹ a copy of the draft order was served²⁰.

1 As to the Secretary of State see PARA 603 ante; and see PARA 628 note 1 ante. As to the transfer to the Welsh Ministers of functions so far as they relate to fishery harbours in Wales see PARA 604 ante.

- 2 For the meaning of 'harbour revision order' see PARA 628 ante. As to applications for harbour revision orders see PARA 630 ante.
- 3 For the meaning of 'person' see PARA 605 note 4 ante.
- 4 Harbours Act 1964 s 17(1)(a) (amended by the Transport Act 1981 s 15, Sch 5 Pt I; and the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(1)(b)); Harbours Act 1964 Sch 3 para 21(1)(a) (Sch 3 paras 1-25 substituted by the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(4), Sch 3). As to the application of the Harbours Act 1964 Sch 3 paras 21-24 (as substituted) see Sch 3 para 17 (as substituted); and PARA 636 ante.
- 5 Ibid Sch 3 para 21(1)(b) (as substituted: see note 4 supra).
- 6 For the meaning of 'land' see PARA 605 note 8 ante.
- 7 Harbours Act 1964 Sch 3 para 21(2) (as substituted: see note 4 supra). As to the compulsory acquisition of land generally see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.
- 8 For the meaning of 'harbour' see PARA 611 ante.
- 9 Harbours Act 1964 Sch 3 para 22(1)(a) (as substituted: see note 4 supra). For the meanings of 'England' and 'Wales' see PARA 613 note 1 ante.
- 10 For the meaning of 'harbour empowerment order' see PARA 645 post.
- 11 Harbours Act 1964 Sch 3 para 22(1)(b) (as substituted: see note 4 supra).
- 12 Ibid Sch 3 para 22(2) (as substituted: see note 4 supra). The order is subject to special parliamentary procedure to the same extent as it would be, by virtue of the Acquisition of Land Act 1981 s 18, s 19, Sch 3 para 5 or Sch 3 para 6 (National Trust land, commons etc), if it were an order under s 2(1): Harbours Act 1964 Sch 3 para 22(2) (as so substituted). As to the procedure under the Acquisition of Land Act 1981 see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 603 et seq.
- 13 Harbours Act 1964 Sch 3 para 24(1)(a) (as substituted: see note 4 supra). For the meaning of 'Gazette and local advertisement' see PARA 634 note 3 ante. The notice must: (1) state that the order has been made (Sch 3 para 24(2)(a) (as so substituted)); (2) name a place where a copy of the order and any map annexed to it may be inspected at all reasonable hours (Sch 3 para 24(2)(b) (as so substituted)); and (3) state, in the case of an order which is not subject to special parliamentary procedure, the date on which it comes into operation (Sch 3 para 24(2)(c) (as so substituted)).
- 14 As to the service of documents see PARA 761 post.
- 15 For the meaning of 'harbour authority' see PARA 619 ante.
- 16 Harbours Act 1964 Sch 3 para 24(1)(b) (as substituted: see note 4 supra).
- 17 Ie in compliance with a requirement imposed by virtue of ibid Sch 3 para 12 (as substituted): see PARA 634 ante.
- 18 Ibid Sch 3 para 24(1)(c) (as substituted: see note 4 supra).
- 19 Ie in compliance with a requirement imposed by virtue of ibid Sch 3 para 14 (as substituted): see PARA 634 ante.
- 20 Ibid Sch 3 para 24(1)(d) (as substituted: see note 4 supra).

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

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639. Statutory undertakers' land.

The following provisions apply where application is made to the Secretary of State¹ for a harbour revision order² which will authorise the compulsory acquisition of land³ which includes land which has been acquired by statutory undertakers⁴ for the purposes of their undertaking⁵.

If on a representation⁶ made to it the appropriate authority⁷ is satisfied that any of the said land is used for the purposes of the carrying on of the statutory undertakers' undertaking⁸, or that an interest in any of the said land is held for those purposes⁹, the order must not be so made as to authorise the acquisition of any such land unless certain conditions apply¹⁰. The conditions are that the appropriate authority certifies that the nature and situation of the land are such that: (1) without serious detriment to the carrying on of the undertaking, it can be acquired and not replaced¹¹; or (2) if acquired, it can, without such detriment as aforesaid, be replaced by other land belonging to, or available for acquisition by, the undertakers¹².

1 As to the Secretary of State see PARA 603 ante; and see PARA 628 note 1 ante. As to the transfer to the Welsh Ministers of functions so far as they relate to fishery harbours in Wales see PARA 604 ante.

2 For the meaning of 'harbour revision order' see PARA 628 ante. As to applications for harbour revision orders see PARA 630 ante.

3 For the meaning of 'land' see PARA 605 note 8 ante.

4 'Statutory undertakers' means any person authorised by an Act (whether public general or local) or by any order or scheme made under or confirmed by an Act to carry on any of the following undertakings: (1) a railway, light railway, tramway or road transport undertaking; (2) an undertaking the activities of which consist in: (a) the maintenance of a canal; (b) the conservation or improvement of a river or other inland navigation; (c) the improvement, maintenance or management of a harbour (whether natural or artificial), port, haven or estuary, a dock (whether used by sea-going ships or not) or a wharf, quay, pier, jetty or other place at which ships (whether sea-going or not) can ship or unship goods or embark or disembark passengers; or (d) the provision and maintenance of a lighthouse; or (3) an undertaking for the supply of hydraulic power: Harbours Act 1964 s 17(1)(a) (amended by the Transport Act 1981 s 15, Sch 5 Pt I; and the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(1)(b)); Harbours Act 1964 Sch 3 para 25(5) (Sch 3 paras 1-25 substituted by the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(4), Sch 3). For the meaning of 'Act' see PARA 628 note 26 ante. For the meaning of 'person' see PARA 605 note 4 ante. For the meanings of 'harbour', 'dock' and 'wharf' see PARA 611 ante; for the meaning of 'ship' see PARA 611 note 2 ante; for the meaning of 'goods' see PARA 611 note 5 ante; and for the meaning of 'lighthouse' see PARA 611 note 1 ante.

5 Harbours Act 1964 Sch 3 para 25(1) (as substituted: see note 4 supra).

6 The representation must be made before the expiry of the period of 42 days starting with the date on which the notice that the application has been made for the order first appears in a local newspaper: *ibid* Sch 3 para 25(4) (as substituted: see note 4 supra). As to the reckoning of periods see PARA 634 note 8 ante.

7 'The appropriate authority' means: (1) in relation to a statutory undertaker authorised to carry on an undertaking whose activities consist in the improvement, maintenance or management of: (a) a fishery harbour in England, the Secretary of State; or (b) a fishery harbour in Wales, the Welsh Ministers; and (2) in relation to any other statutory undertaker, the Secretary of State: *ibid* Sch 3 para 25(6) (as substituted (see note 4 supra); and amended by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32). In relation to a fishery harbour in England this function was originally vested in the Minister of Agriculture, Fisheries and Food;

as to the dissolution of the Ministry of Agriculture, Fisheries and Food, and the transfer of functions to the Secretary of State, see PARA 603 ante. As to the transfer of functions to the Welsh Ministers see PARA 604 ante. For the meaning of 'fishery harbour' see PARA 612 ante.

8 Harbours Act 1964 Sch 3 para 25(2)(a) (as substituted: see note 4 supra).

9 Ibid Sch 3 para 25(2)(b) (as substituted: see note 4 supra).

10 Ibid Sch 3 para 25(2) (as substituted: see note 4 supra).

11 Ibid Sch 3 para 25(3)(a) (as substituted: see note 4 supra).

12 Ibid Sch 3 para 25(3)(b) (as substituted: see note 4 supra).

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

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(iii) Procedure for Orders by the Secretary of State of his Own Motion

640. Notices.

Where the Secretary of State¹ proposes to make a harbour revision order² of his own motion, he must first: (1) publish a notice³ by Gazette and local advertisement⁴ and in such other ways as he thinks appropriate⁵; and (2) serve⁶ on the harbour authority⁷, and on any other person who he thinks ought to have notice of the proposal, a copy of the draft order and a notice⁸.

1 As to the Secretary of State see PARA 603 ante; and see PARA 631 note 2 ante. As to the transfer to the Welsh Ministers of functions so far as they relate to fishery harbours in Wales see PARA 604 ante.

2 For the meaning of 'harbour revision order' see PARA 628 ante. As to the making by the Secretary of State of an order of his own motion see PARA 631 ante.

3 The notice must: (1) state that the Secretary of State proposes to make the order; (2) contain a concise summary of the draft order; (3) name a place where a copy of the draft order may be inspected at all reasonable hours; and (4) state that any person who desires to object to the proposal should do so in writing to the Secretary of State, specifying the grounds of his objection, before the expiry of the period of 42 days starting with the date specified in the notice, which date must be the date on which the notice first appears in a local newspaper: Harbours Act 1964 s 17(1)(b) (amended by the Transport Act 1981 s 15, Sch 5 Pt I; and the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(1)(b)); Harbours Act 1964 Sch 3 para 26(2), (3) (Sch 3 paras 26-31 substituted by the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(4), Sch 3). For the meaning of 'person' see PARA 605 note 4 ante; and for the meaning of 'writing' see PARA 605 note 3 ante. As to the reckoning of periods see PARA 634 note 8 ante.

4 For the meaning of 'Gazette and local advertisement' see PARA 634 note 3 ante.

5 Harbours Act 1964 Sch 3 para 26(1)(a) (as substituted: see note 3 supra).

6 As to the service of documents see PARA 761 post.

7 For the meaning of 'harbour authority' see PARA 619 ante.

8 Harbours Act 1964 Sch 3 para 26(1)(b) (as substituted: see note 3 supra). The notice must state that the Secretary of State proposes to make the order, and that if the harbour authority or other person served desires to object to the proposal he should do so in writing to the Secretary of State, specifying the grounds of his objection, before the expiry of the period of 42 days starting with the date on which the notice is served on him: Sch 3 para 26(4) (as so substituted).

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/5. HARBOUR ORDERS AND SCHEMES/(1) HARBOUR REVISION ORDERS/(iii) Procedure for Orders by the Secretary of State of his Own Motion/641. Objections.

641. Objections.

The following provisions¹ have effect where:

- 59 (1) all notices concerning a proposal of the Secretary of State² to make a harbour revision order³ have been⁴ published⁵;
- 60 (2) all notices and other documents which are required to be served⁶ have been served⁷; and
- 61 (3) every period for the making of objections to the Secretary of State in respect of the proposal has expired⁸.

If an objection to the proposal was made to the Secretary of State and has not been withdrawn he must cause an inquiry⁹ to be held, unless he decides that the proposal should not proceed further¹⁰, or he considers the objection is frivolous or too trivial to warrant the holding of an inquiry¹¹, or the objection does not specify the grounds on which it is made¹².

1 The provisions of the Harbours Act 1964 Sch 3 para 28 (as substituted), Sch 3 para 29 (as substituted) (see PARA 642 post), and Sch 3 paras 30-31 (as substituted) (see PARA 643 post): s 17(1)(b) (amended by the Transport Act 1981 s 15, Sch 5 Pt I; and the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(1)(b)); Harbours Act 1964 Sch 3 para 27 (Sch 3 paras 26-31 substituted by the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(4), Sch 3).

2 As to the Secretary of State see PARA 603 ante; and see PARA 631 note 2 ante. As to the transfer to the Welsh Ministers of functions so far as they relate to fishery harbours in Wales see PARA 604 ante.

3 For the meaning of 'harbour revision order' see PARA 628 ante. As to the making by the Secretary of State of an order of his own motion see PARA 631 ante.

4 le under the Harbours Act 1964 Sch 3 para 26(1)(a) (as substituted): see PARA 640 ante.

5 Ibid Sch 3 para 27(1)(a) (as substituted: see note 1 supra).

6 le under ibid Sch 3 para 26(1)(b) (as substituted): see PARA 640 ante.

7 Ibid Sch 3 para 27(1)(b) (as substituted: see note 1 supra).

8 Ibid Sch 3 para 27(1)(c) (as substituted: see note 1 supra).

9 As to the provisions governing such inquiries see PARA 760 post.

10 Harbours Act 1964 Sch 3 para 28(a) (as substituted: see note 1 supra).

11 Ibid Sch 3 para 28(b) (as substituted: see note 1 supra).

12 Ibid Sch 3 para 28(c) (as substituted: see note 1 supra).

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

641 Objections

TEXT AND NOTES 10-12--Harbours Act 1964 Sch 3 para 28 further substituted: Marine and Coastal Access Act 2009 Sch 21 para 6(1). See further Marine and Coastal Access Act 2009 Sch 21 para 7.

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642. The decision.

The Secretary of State¹ must consider any objections made and not withdrawn², and the report of any person who held³ an inquiry⁴. Following such consideration the Secretary of State must decide: (1) not to make the order proposed⁵; (2) to make the order in the form of the draft⁶; or (3) to make it with modifications⁷.

1 As to the Secretary of State see PARA 603 ante; and see PARA 628 note 1 ante. As to the making by the Secretary of State of harbour revision orders of his own motion see PARA 631 ante. For the meaning of 'harbour revision order' see PARA 628 ante. As to the transfer to the Welsh Ministers of functions so far as they relate to fishery harbours in Wales see PARA 604 ante.

2 Harbours Act 1964 s 17(1)(b) (amended by the Transport Act 1981 s 15, Sch 5 Pt I; and the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(1)(b)); Harbours Act 1964 Sch 3 para 29(1)(a) (Sch 3 paras 26-31 substituted by the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(4), Sch 3). As to the application of the Harbours Act 1964 Sch 3 para 29 (as substituted) see Sch 3 para 27 (as substituted); and PARA 641 ante.

3 le under ibid Sch 3 para 28 (as substituted): see PARA 641 ante.

4 Ibid Sch 3 para 29(1)(b) (as substituted: see note 2 supra).

5 Ibid Sch 3 para 29(2)(a) (as substituted: see note 2 supra).

6 Ibid Sch 3 para 29(2)(b) (as substituted: see note 2 supra). As to the right to challenge orders see PARA 655 post.

7 Ibid Sch 3 para 29(2)(c) (as substituted: see note 2 supra).

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

642 The decision

TEXT AND NOTE 4--Harbours Act 1964 Sch 3 para 29(1)(b) amended: Marine and Coastal Access Act 2009 Sch 21 para 6(2). See further Marine and Coastal Access Act 2009 Sch 21 para 7.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/5. HARBOUR ORDERS AND SCHEMES/(1) HARBOUR REVISION ORDERS/(iii) Procedure for Orders by the Secretary of State of his Own Motion/643. The order.

643. The order.

Where the Secretary of State¹ proposes to make the harbour revision order² with modifications which appear to him substantially to affect the character of the order as originally proposed to be made, he must take such steps as appear to him to be sufficient and reasonably practicable for informing persons³ likely to be concerned⁴, and must not make the order until a reasonable period for consideration of, and comment upon, the proposed modifications by those persons has expired⁵.

As soon as possible after a harbour revision order has been made by the Secretary of State of his own motion he must publish a notice⁶ by Gazette and local advertisement⁷, and serve⁸ a copy of the order on each person on whom notice⁹ of the proposed order was served¹⁰.

1 As to the Secretary of State see PARA 603 ante; and see PARA 628 note 1 ante. As to the transfer to the Welsh Ministers of functions so far as they relate to fishery harbours in Wales see PARA 604 ante.

2 For the meaning of 'harbour revision order' see PARA 628 ante. As to the making by the Secretary of State of an order of his own motion see PARA 631 ante.

3 For the meaning of 'person' see PARA 605 note 4 ante.

4 Harbours Act 1964 s 17(1)(b) (amended by the Transport Act 1981 s 15, Sch 5 Pt I; and the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(1)(b)); Harbours Act 1964 Sch 3 para 30(a) (Sch 3 paras 26-31 substituted by the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(4), Sch 3). As to the application of the Harbours Act 1964 Sch 3 paras 30-31 (as substituted) see Sch 3 para 27 (as substituted); and PARA 641 ante.

5 Ibid Sch 3 para 30(b) (as substituted: see note 4 supra).

6 The notice must state that the order has been made (ibid Sch 3 para 31(2)(a) (as substituted: see note 4 supra)), and name a place where a copy of the order may be inspected at all reasonable hours (Sch 3 para 31(2)(b) (as so substituted)).

7 Ibid Sch 3 para 31(1)(a) (as substituted: see note 4 supra). For the meaning of 'Gazette and local advertisement' see PARA 634 note 3 ante.

8 As to the service of documents see PARA 761 post.

9 Ie under the Harbours Act 1964 Sch 3 para 26(1)(b) (as substituted): see PARA 640 ante.

10 Ibid Sch 3 para 31(1)(b) (as substituted: see note 4 supra).

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/5. HARBOUR ORDERS AND SCHEMES/(2) ORDERS ABOUT PORT APPOINTMENTS/644. Power to make orders about port appointments.

(2) ORDERS ABOUT PORT APPOINTMENTS

644. Power to make orders about port appointments.

The Secretary of State¹ may by order vary the constitution of a harbour authority² so far as it relates to the appointment by him of any member or members of the authority:

- 62 (1) so as to abolish the power of appointment (except where the power is to appoint the chairman of the authority)³; or
- 63 (2) so as to provide for the power of appointment to be exercised by such other person⁴ or persons as may be specified in the order⁵.

However, no such order may be made by the Secretary of State with respect to the constitution of a harbour authority if under the constitution all the members of the authority, apart from ex officio and co-opted members, are appointed by him⁶.

The order may relate to more than one harbour authority⁷, and may contain such supplementary, incidental and consequential provisions as appear to the Secretary of State to be necessary or expedient⁸. Where the constitution of a harbour authority provides for the appointment by the Secretary of State of more than one member, the order may make different provision for each member falling to be so appointed and may make provision for some only of those members⁹.

An order made under these provisions may be challenged on certain grounds¹⁰.

1 The Harbours Act 1964 s 15A (as added) refers to 'the ministers' being defined as the Secretary of State and the Minister of Agriculture, Fisheries and Food: see s 15A(5) (s 15A added by the Transport Act 1981 s 18(1), Sch 6 para 5(1)). As to the Secretary of State see PARA 603 ante; and as to the dissolution of the Ministry of Agriculture, Fisheries and Food, and the transfer of the functions to the Secretary of State, see PARA 603 ante. As to the transfer to the Welsh Ministers of functions under the Harbours Act 1964 s 15A (as added) so far as they relate to fishery harbours in Wales see PARA 604 ante.

2 For the meaning of 'harbour authority' see PARA 619 ante.

3 Harbours Act 1964 s 15A(1)(a) (as added: see note 1 supra).

4 For the meaning of 'person' see PARA 605 note 4 ante.

5 Harbours Act 1964 s 15A(1)(b) (as added: see note 1 supra). Before making an order, the Secretary of State must consult the harbour authority concerned and such other persons affected, or bodies representative of such persons, as he thinks fit: s 15A(4) (as so added). An order under s 15A (as added) must be made by statutory instrument and is subject to annulment in pursuance of a resolution of either House of Parliament: s 54(1), (2) (amended by the Transport Act 1981 Sch 6 para 5(3)).

6 Harbours Act 1964 s 15A(2) (as added: see note 1 supra).

7 Ibid s 15A(3)(a) (as added: see note 1 supra).

8 Ibid s 15A(3)(b) (as added: see note 1 supra).

9 Ibid s 15A(3) (as added: see note 1 supra).

10 See ibid s 44 (as substituted and amended); and PARA 655 post.

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

644 Power to make orders about port appointments

NOTE 5--See also Harbours Act 1964 s 54(3), (4) (added by Marine and Coastal Access Act 2009 Sch 21 para 3(2)).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/5. HARBOUR ORDERS AND SCHEMES/(3) HARBOUR EMPOWERMENT ORDERS/645. Objects of harbour empowerment orders.

(3) HARBOUR EMPOWERMENT ORDERS

645. Objects of harbour empowerment orders.

Where a person¹ desires to secure the achievement of any of certain objects² but neither he nor any other person has powers, or sufficient powers, to secure it, or to do so effectively, he may apply in writing³ to the Secretary of State⁴ for him to make an order conferring on the applicant, or some other designated person, or a body to be constituted for the purpose by the order (as specified in the application), all such powers⁵ as are requisite for enabling that object to be achieved⁶. The objects in question are:

- 64 (1) the improvement, maintenance or management of a harbour⁷, whether natural or artificial, navigated by sea-going ships⁸ (not being a fishery harbour⁹) or of a port, haven, estuary, tidal or other river or inland waterway so navigated (not being a fishery harbour)¹⁰;
- 65 (2) the construction of an artificial harbour navigable by sea-going ships or an inland waterway so navigable¹¹; and
- 66 (3) the construction, improvement, maintenance or management of a dock¹² elsewhere than at a fishery harbour or of a wharf¹³ elsewhere than at such a harbour¹⁴.

Where a person desires to secure the achievement of either or both of the following objects, namely: (a) the improvement, maintenance or management of a fishery harbour¹⁵; and (b) the construction, improvement, maintenance or management of a dock at a fishery harbour or a wharf at such a harbour¹⁶, but neither he nor any other person has powers, or sufficient powers, to secure it, or to do so effectively, he may apply in writing to the Secretary of State¹⁷ for him to make such an order¹⁸.

An order made under these provisions¹⁹ is known as a 'harbour empowerment order'²⁰.

The Secretary of State may not make a harbour empowerment order unless he is satisfied that its making is desirable in the interests of facilitating the efficient and economic transport of goods²¹ or passengers by sea or in the interests of the recreational use of sea-going ships²².

Where it is proposed to make a harbour empowerment order, the Secretary of State²³ must consider whether any person who is, or but for any national service²⁴ of his would be, the holder of any situation, place or employment with a person or body subject to any of the provisions of the order might, if it were made, suffer any loss of employment or loss or diminution of emoluments or pension rights in consequence of any of the provisions of the order²⁵. If it appears to the Secretary of State that such a person who is or would be the holder of such a situation, place or employment might suffer any such loss or diminution²⁶ and that, if he does, compensation should be paid in respect of it, he may not make the order unless he is satisfied that it secures that compensation²⁷ will be paid to or in respect of that person if he suffers any such loss or diminution²⁸.

The Secretary of State²⁹ may not make a harbour empowerment order which provides for extinguishing a public right of way over a footpath³⁰, bridleway³¹ or restricted byway³² unless he is satisfied: (i) that an alternative right of way has been or will be provided³³; or (ii) that the provision of an alternative right of way is not required³⁴. The Secretary of State may not make a harbour empowerment order which provides for diverting a public right of way over a footpath,

bridleway or restricted byway unless he is satisfied that the path or way will not be substantially less convenient to the public in consequence of the diversion³⁵.

The Secretary of State may not make a harbour empowerment order including provision authorising the compulsory acquisition of land unless it also includes provision for the payment of compensation in respect of the acquisition³⁶.

1 For the meaning of 'person' see PARA 605 note 4 ante.

2 As to the specified objects see the text to notes 7-14 infra.

3 For the meaning of 'writing' see PARA 605 note 3 ante.

4 The Harbours Act 1964 s 16 (as amended) refers to 'the minister', who is defined as the Minister of Transport: s 57(1). As to this minister, and the devolution of his functions to the Secretary of State, see PARA 603 ante.

5 The powers include, in particular, power to acquire land compulsorily and to levy charges other than ship, passenger and goods dues: *ibid* s 16(1). For the meaning of 'land' see PARA 605 note 8 ante. For the meaning of 'ship, passenger and goods dues' see PARA 628 note 28 ante. As to the compulsory acquisition of land generally see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.

6 *Ibid* s 16(1).

7 For the meaning of 'harbour' see PARA 611 ante.

8 For the meaning of 'ship' see PARA 611 note 2 ante.

9 For the meaning of 'fishery harbour' see PARA 612 ante.

10 Harbours Act 1964 s 16(1)(a).

11 *Ibid* s 16(1)(b).

12 For the meaning of 'dock' see PARA 611 ante.

13 For the meaning of 'wharf' see PARA 611 ante.

14 Harbours Act 1964 s 16(1)(c).

15 *Ibid* s 16(2)(a).

16 *Ibid* s 16(2)(b).

17 *Ibid* s 16(2) refers to the Minister of Agriculture, Fisheries and Food; but as to the dissolution of the Ministry of Agriculture, Fisheries and Food, and the transfer of functions to the Secretary of State, see PARA 603 ante. As to the transfer to the Welsh Ministers of functions under s 16 (as amended) so far as they relate to fishery harbours in Wales see PARA 604 ante.

18 *Ibid* s 16(2).

19 *Ie* under *ibid* s 16 (as amended).

20 *Ibid* ss 16(4), 57(1).

21 For the meaning of 'goods' see PARA 611 note 5 ante.

22 Harbours Act 1964 s 16(5) (amended by the Transport and Works Act 1992 s 63(1), Sch 3 para 2(1), (2)). Notwithstanding the Harbours Act 1964 s 16(5) (as amended), a harbour empowerment order may be made if the Secretary of State is satisfied that the making of the order is desirable in the interests of securing the efficient operation of a depot for the sorting of goods which are to be loaded or have been unloaded in the harbour to which the order relates: see the Docks and Harbours Act 1966 s 36(2).

23 The Harbours Act 1964 s 19(2) refers to the 'Minister of the Crown by whom the order is to be made'. As to the transfer of functions under this provision to the Secretary of State see notes 4, 17 *supra*.

- 24 For the meaning of 'national service' see PARA 630 note 11 ante.
- 25 Harbours Act 1964 s 19(2).
- 26 He suffer any such loss or diminution in consequence of any of the provisions of the order: see *ibid* s 19(2).
- 27 The compensation must correspond, as near as may be, to that payable by virtue of regulations made under *ibid* s 19(1) (see PARA 653 post), to or in respect of the holder in similar circumstances of a similar situation, place or employment, in respect of a similar loss or diminution suffered in consequence of any of the provisions of a harbour reorganisation scheme: s 19(2).
- 28 *Ibid* s 19(2).
- 29 *Ibid* s 17(2A), (2B) (as added) refer to the Secretary of State and the Minister of Agriculture, Fisheries and Food; but see note 17 *supra*.
- 30 For the meaning of 'footpath' see PARA 628 note 16 ante.
- 31 For the meaning of 'bridleway' see PARA 628 note 17 ante.
- 32 For the meaning of 'restricted byway' see PARA 628 note 18 ante.
- 33 Harbours Act 1964 s 17(2A)(a) (s 17(2A), (2B) added by the Transport and Works Act 1992 Sch 3 para 3; and amended by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, reg 2, Schedule Pt I).
- 34 Harbours Act 1964 s 17(2A)(b) (as added and amended: see note 33 *supra*).
- 35 *Ibid* s 17(2B) (as added and amended: see note 33 *supra*).
- 36 *Ibid* s 17(2).

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/5. HARBOUR ORDERS AND SCHEMES/(3) HARBOUR EMPOWERMENT ORDERS/646. Contents of harbour empowerment orders.

646. Contents of harbour empowerment orders.

A harbour empowerment order¹ may include all such provisions as appear to the Secretary of State² to be requisite or expedient for giving full effect to any provision³ of the order⁴. The order may also include any supplementary, consequential or incidental provisions appearing to him to be requisite or expedient for the purposes of, or in connection with, the order, including⁵:

- 67 (1) penal provisions⁶;
- 68 (2) provisions incorporating, with or without modifications, any provisions of the Lands Clauses Acts⁷ or any other enactment⁸;

- 69 (3) provisions excluding or modifying any provision of any Act⁹ or of any instrument made under any Act (including the Harbours Act 1964)¹⁰.

Where a harbour empowerment order includes provision for the compulsory acquisition of land¹¹, there must, in the case of each parcel of land proposed to be acquired compulsorily, be annexed to the order a map of a scale not less than 1:2500 on which the boundaries of that parcel are plainly delineated¹². Where an order includes provision for extinguishing or diverting a public right of way over a footpath¹³, bridleway¹⁴ or restricted byway¹⁵, there must be annexed to the order a map of a scale not less than 1:2500 on which the path or way concerned, and in the case of a diversion, the new path or way, are plainly delineated¹⁶.

Where provision for the compulsory acquisition of land is included in a harbour empowerment order, the order must be so framed as to secure:

- 70 (a) that if the land is ecclesiastical property¹⁷ at the time of the acquisition, any sum agreed upon or awarded for the fee simple of the land is paid to the Church Commissioners¹⁸; and
- 71 (b) that any sum to be paid by way of compensation for damage sustained by reason of severance¹⁹ or injury²⁰ affecting land that is ecclesiastical property is so paid²¹.

An interest in land in which there is a Crown or duchy interest²² may be acquired compulsorily²³, and a power in relation to land in which there is a Crown or duchy interest (other than a power to acquire land compulsorily) may be conferred by a harbour empowerment order, subject in each case to the consent of the appropriate authority²⁴.

There are savings in respect of the establishment and alteration of telegraphic lines²⁵.

1 For the meaning of 'harbour empowerment order' see PARA 645 ante. As to the objects for which harbour empowerment orders may be made see PARA 645 ante. As to the procedure for making an order see PARA 647 post.

2 As to the Secretary of State see PARA 603 ante. See also PARA 645 notes 4, 17 ante.

3 In any provision included in the order by virtue of the Harbours Act 1964 s 16(1)-(5) (as amended): see PARA 645 ante.

4 Ibid s 16(6).

5 The inclusion of the specific descriptions of provision mentioned is without prejudice to the generality of the foregoing words: see *ibid* s 16(6).

6 A penal provision in a harbour empowerment order may not be so framed as to permit of a person's being punished otherwise than on conviction or as to permit:

11 (1) on summary conviction: (a) in the case of an offence triable either summarily or on indictment, the infliction of a fine exceeding the prescribed sum; (b) in the case of an offence triable only summarily, the infliction of a fine exceeding level 4 on the standard scale or, in the case of a continuing offence, a daily fine exceeding £50 for each day on which the offence continues after conviction (*ibid* s 16(6)(a)(i), (ii) (substituted by the Transport Act 1981 s 18, Sch 6 para 14(1), (2); and amended by virtue of the Criminal Justice Act 1982 s 46));

12 (2) on conviction on indictment, the infliction of a penalty other than a fine (Harbours Act 1964 s 16(6)(b) (amended by the Transport Act 1981 Sch 6 para 14(1), (3))).

As to the prescribed sum see PARA 605 note 15 ante; and as to the standard scale see PARA 605 note 13 ante.

7 As to the Lands Clauses Acts see PARA 629 note 6 ante.

- 8 For the meaning of 'enactment' see PARA 628 note 26 ante. An enactment of which provisions are commonly incorporated in a harbour empowerment order is the Harbours, Docks and Piers Clauses Act 1847: see PARA 602 ante.
- 9 For the meaning of 'Act' see PARA 628 note 26 ante.
- 10 Harbours Act 1964 s 16(6) (amended by the Transport Act 1981 Sch 6 para 3; and the Transport and Works Act 1992 s 63(1), Sch 3 para 1(1), (4)(b), (c)). By virtue of the Harbours Act 1964 s 16(6) (as amended), the order may include provision for the settlement by a court or otherwise of any dispute or other matter arising in connection with any of the other provisions of the order: Docks and Harbours Act 1966 s 45.
- 11 For the meaning of 'land' see PARA 605 note 8 ante. As to the compulsory acquisition of land generally see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.
- 12 Harbours Act 1964 s 16(7) (amended by the Transport and Works Act 1992 Sch 3 para 1(1), (6)).
- 13 For the meaning of 'footpath' see PARA 628 note 16 ante.
- 14 For the meaning of 'bridleway' see PARA 628 note 17 ante.
- 15 For the meaning of 'restricted byway' see PARA 628 note 18 ante.
- 16 Harbours Act 1964 s 16(7A) (added by the Transport and Works Act 1992 Sch 3 para 1(1), (7); and amended by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, reg 2, Schedule Pt I).
- 17 For the meaning of 'ecclesiastical property' see PARA 629 note 18 ante.
- 18 Harbours Act 1964 s 49(3)(a). As to the Church Commissioners see ECCLESIASTICAL LAW. As from a day to be appointed this provision is amended so as to provide for payment to be made, instead of to the Church Commissioners, to the Diocesan Board of Finance for the diocese in which the land is situated: s 49(3)(a) (prospectively amended by the Church of England (Miscellaneous Provisions) Measure 2006 s 14, Sch 5 para 10(a)). At the date at which this volume states the law no such day had been appointed.
- 19 As to severance depreciation see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 810 et seq.
- 20 The severance or injury arising from the acquisition of land in pursuance of the provision for acquisition included in the order: Harbours Act 1964 s 49(3)(b). As to compensation for injury from works see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 877 et seq.
- 21 Ibid s 49(3)(b). Any sum which, in pursuance of a provision included in a harbour empowerment order in compliance with s 49(3), is paid to the Church Commissioners with reference to any land must, if the land is not consecrated, be applied by them for the purposes for which the proceeds of a sale by agreement of the fee simple of the land would be applicable under any enactment or Measure authorising such a sale or disposing of the proceeds of such a sale, and if the land is consecrated, the sum is to be applied by them in such manner as they may determine: s 49(4). As from a day to be appointed this provision is amended so as to provide that any sum which, in pursuance of a provision included in an order in compliance with s 49(3), is paid to the Diocesan Board of Finance for the diocese in which the land is situated with reference to any land must, if the land is not consecrated, be applied by it for the purposes for which the proceeds of a sale by agreement of the fee simple of the land would be applicable under any enactment or Measure authorising such a sale or disposing of the proceeds of such a sale, and if the land is consecrated, be applied by it in such manner as it may determine as if the land had been sold under the Pastoral Measure 1983: Harbours Act 1964 s 49(4) (prospectively amended by the Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 10(a)). At the date at which this volume states the law no such day had been appointed.
- 22 For the meaning of 'Crown or duchy interest' see PARA 629 note 23 ante.
- 23 The acquired compulsorily by virtue of the Harbours Act 1964: s 52(1).
- 24 Ibid s 52(1). For the meaning of 'the appropriate authority' see PARA 629 note 26 ante.
- 25 See ibid s 53 (as substituted); and PARA 629 note 27 ante.

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

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TEXT AND NOTES 4-10--Harbours Act 1964 s 16(6) further amended: Marine and Coastal Access Act 2009 Sch 21 para 2.

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647. Procedure for making harbour empowerment orders.

The procedure¹ for making harbour revision orders on application to the Secretary of State has effect, subject to certain modifications², with respect to the procedure for the making of harbour empowerment orders by the Secretary of State³.

A harbour empowerment order may be challenged on certain grounds⁴.

1 le the procedure set out in the Harbours Act 1964 s 17(1)(a) (as amended), Sch 3 paras 1-25 (as substituted): see PARA 632 et seq ante.

2 The modifications are:

- 13 (1) for references to a harbour revision order there are substituted references to a harbour empowerment order (ibid s 17(1)(g) (amended by the Transport Act 1981 s 15, Sch 5 Pt I; and the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(1)(a)); Harbours Act 1964 Sch 3 para 32(1), (2) (Sch 3 para 32 substituted by the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(4), Sch 3));
- 14 (2) the provisions of the Harbours Act 1964 Sch 3 paras 13, 14 (as substituted) (see PARA 634 ante) are substituted so that Sch 3 para 13 (as so substituted) provides that the Secretary of State may require the applicant to serve on any specified person within any specified period of time a copy of the draft order and of any map accompanying the application together with a notice stating: (a) that the application has been made to the Secretary of State; and (b) that, if the person wishes to object to the application he should do so in writing to the Secretary of State, specifying the grounds of his objection, before the expiry of the period of 42 days starting with the date on which the notice is served on him; and that the copy of the map referred to above must be drawn to the same scale as that map (Sch 3 para 32(1), (3) (as so substituted));
- 15 (3) Sch 3 para 24(1)(b) (as substituted) (see PARA 638 ante) is omitted, and the reference in Sch 3 para 24(1)(d) (as substituted) (see PARA 638 ante) to Sch 3 para 14 is replaced by a reference to Sch 3 para 13(1) (Sch 3 para 32(1), (4) (as so substituted)).

For the meaning of 'harbour empowerment order' see PARA 645 ante. As to the service of documents see PARA 761 post. For the meaning of 'person' see PARA 605 note 4 ante. For the meaning of 'writing' see PARA 605 note 3 ante. As to the reckoning of periods see PARA 634 note 8 ante. As to the Secretary of State see PARA 603 ante. See also PARA 645 notes 4, 17 ante.

3 Ibid s 17(1)(g) (as amended: see note 2 supra).

4 See ibid s 44 (as substituted and amended); and PARA 655 post.

UPDATE**628-655 Harbour Orders and Schemes**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/5. HARBOUR ORDERS AND SCHEMES/(4) HARBOUR REORGANISATION SCHEMES/648. Harbour reorganisation schemes for groups of harbours.

(4) HARBOUR REORGANISATION SCHEMES**648. Harbour reorganisation schemes for groups of harbours.**

With a view to securing the efficient and economical development of a group of harbours¹, each of which is being improved, maintained or managed by a harbour authority² in the exercise and performance of statutory powers and duties³, a scheme with respect to the group providing for all or any of the specified matters⁴ may be submitted to the Secretary of State by all or any of the relevant authorities⁵. Such a scheme is known as a 'harbour reorganisation scheme'⁶.

If the Secretary of State is of opinion that, with a view to securing the efficient and economical development of a group of harbours⁷, a harbour reorganisation scheme ought to be made providing for all or any of the matters for which provision may be made by such a scheme, he may by order make such a scheme providing for those matters⁸.

1 For the meaning of 'harbour' see PARA 611 ante. References to a harbour in the Harbours Act 1964 s 18 (as amended) include references to a depot provided under the Docks and Harbours Act 1966 s 36 (see PARA 743 post): s 36(4). The Secretary of State may not confirm or make of his own motion a harbour reorganisation scheme if any harbour comprised in the group to which the scheme relates is a fishery harbour: Harbours Act 1964 s 18(6) (amended by the Transport Act 1981 s 18(1), Sch 6 para 6(3)). For the meaning of 'fishery harbour' see PARA 612 ante.

The Harbours Act 1964 s 18 (as amended) refers to 'the minister', who is defined as the Minister of Transport: s 57(1). As to this minister and the devolution of his functions to the Secretary of State see PARA 603 ante.

2 For the meaning of 'harbour authority' see PARA 619 ante.

3 As to references to 'a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties' see PARA 605 note 5 ante.

4 I.e. the matters mentioned in the Harbours Act 1964 s 18(2) (as amended): see PARA 649 post.

5 Ibid s 18(1) (amended by the Transport Act 1981 s 40, Sch 12 Pt II). 'The relevant authorities' means the authorities which between them are engaged, in the exercise and performance of statutory powers and duties, in improving, maintaining or managing the several harbours comprised in the group: Harbours Act 1964 s 18(1) (as so amended). As to the procedure for submission of harbour reorganisation schemes see PARA 650 post; and as to the confirmation of harbour reorganisation schemes see PARA 651 post.

6 Ibid s 18(1) (as amended: see note 5 supra), s 57(1).

7 le any such group of harbours as is mentioned in *ibid* s 18(1) (as amended) (see the text to notes 1-5 *supra*): s 18(1A) (added by the Transport Act 1981 Sch 6 para 3).

8 Harbours Act 1964 s 18(1A) (as added: see note 7 *supra*). This provision, as enacted, refers to the Secretary of State, not 'the minister': cf s 18(1) (as amended); and note 1 *supra*. As to the procedure for the making of harbour reorganisation schemes by the Secretary of State of his own motion see PARA 652 *post*.

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/5. HARBOUR ORDERS AND SCHEMES/(4) HARBOUR REORGANISATION SCHEMES/649. Contents of harbour reorganisation schemes.

649. Contents of harbour reorganisation schemes.

A harbour reorganisation scheme¹ may provide for all or any of the following matters:

- 72 (1) transferring powers or duties conferred or imposed by a statutory provision² of local application on any of the relevant authorities³ for the purpose of, or in connection with, the improvement, maintenance or management of a harbour⁴ comprised in the group to another of those authorities or to a body constituted by the scheme⁵;
- 73 (2) transferring interests of any of the relevant authorities in fixed or movable property used by it for the purposes of the harbour in question and rights or liabilities enjoyed or incurred by it for those purposes to another of those authorities or to a body constituted by the scheme⁶;
- 74 (3) transferring powers or duties⁷ conferred or imposed by a statutory provision of local application on any of the relevant authorities or powers or duties so conferred or imposed in relation to a harbour comprised in the group on a local lighthouse authority⁸ which is not one of the relevant authorities to another person⁹ or to a body constituted by the scheme¹⁰;
- 75 (4) transferring interests of any of the relevant authorities or of a local lighthouse authority in fixed or movable property used by it for the purposes of, or in connection with, the exercise or performance of any powers or duties transferred by the scheme¹¹ to the person to whom the powers or duties are transferred¹²;
- 76 (5) transferring to any of the relevant authorities or to a body constituted by the scheme interests of a person in fixed or movable property used by him for carrying out harbour operations¹³ at a harbour that is comprised in the group or is adjacent to any of the harbours so comprised¹⁴;
- 77 (6) transferring to the service of a person or body to whom any powers, duties, interests, rights or liabilities are transferred by a scheme¹⁵ officers or servants employed by the person from whom the powers, duties, interests, rights or liabilities are transferred¹⁶;

- 78 (7) dissolving any body of constables maintained by any of the relevant authorities¹⁷;
- 79 (8) preserving (with or without adjustment) or otherwise securing the rights, as respects pensions, gratuities or other like benefits, of persons transferred by the scheme and their spouses and dependants and of certain other persons¹⁸;
- 80 (9) making such provision as appears to the Secretary of State necessary or expedient for rendering of full effect any provision of the scheme¹⁹ and such other supplementary, consequential or incidental provision as appears to him to be necessary or expedient for any of the purposes of the scheme²⁰;
- 81 (10) such other provisions repealing or amending any general Act, or varying or revoking any order under any general Act, or any trust or other arrangement, as appears to the Secretary of State to be necessary or expedient for the purpose of any provision of the scheme made by virtue of head (8) above²¹.

A harbour reorganisation scheme may include, as respects any harbour authority (including a body which is to be a harbour authority under the scheme) to which statutory powers or duties are transferred by the scheme or as respects any harbour which under the scheme is to be managed by that authority, many of the provisions which may be included in harbour revision orders²².

Where a harbour reorganisation scheme includes provision for transferring interests in land²³, there must, in the case of each parcel of land interests in which are proposed to be transferred, be annexed to the scheme a map of a scale not less than 1:2500 on which the boundaries of that parcel are plainly delineated²⁴. An interest in land in which there is a Crown or duchy interest²⁵ may be acquired compulsorily²⁶, and a power in relation to land in which there is a Crown or duchy interest (other than a power to acquire land compulsorily) may be conferred by a harbour reorganisation scheme, subject in each case to the consent of the appropriate authority²⁷.

There are savings in respect of the establishment and alteration of telegraphic lines²⁸.

1 For the meaning of 'harbour reorganisation scheme', and as to the purpose for which a harbour reorganisation scheme may be made, see PARA 648 ante. As to the procedure for promoting harbour reorganisation schemes see PARA 650 et seq post.

2 For the meaning of 'statutory provision' see PARA 628 note 9 ante.

3 For the meaning of 'the relevant authorities' see PARA 648 note 5 ante.

4 For the meaning of 'harbour' see PARA 611 ante.

5 Harbours Act 1964 s 18(2)(a).

6 Ibid s 18(2)(b). As to the assumption by the transferee of a debt to the Secretary of State where property, rights and liabilities of a nationalised board are transferred by virtue of a harbour reorganisation scheme see PARA 628 note 12 ante. As to the Secretary of State see PARA 603 ante.

7 Ie other than powers or duties within ibid s 18(2)(a): see head (1) in the text.

8 For the meaning of 'local lighthouse authority' see PARA 611 note 1 ante.

9 Ie another person whether one of the relevant authorities or not: see the Harbours Act 1964 s 18(2)(c). For the meaning of 'person' see PARA 605 note 4 ante.

10 Ibid s 18(2)(c).

11 Ie by a provision of the scheme having effect by virtue of ibid s 18(2)(c): see head (3) in the text.

12 Ibid s 18(2)(d). The scheme may transfer to the person to whom the powers or duties are transferred rights or liabilities enjoyed or incurred by the authority from which the powers or duties are transferred in, or in connection with, the exercise or performance of the transferred powers or duties: s 18(2)(d).

13 For the meaning of 'harbour operations' see PARA 605 note 8 ante.

14 Harbours Act 1964 s 18(2)(e). The interests transferred may not be those of a person engaged in improving, maintaining or managing the harbour in the exercise and performance of statutory powers and duties: s 18(2)(e). The Secretary of State may not confirm, or make of his own motion, a harbour reorganisation scheme containing such provision as is authorised by s 18(2)(e) unless it also includes provision for the payment of compensation in respect of the transfer of the interests in question: s 18(5) (amended by the Transport Act 1981 s 18(1), Sch 6 para 6(3)).

The Harbours Act 1964 s 18(5) (as amended) refers to 'the minister', who is defined as the Minister of Transport: s 57(1). As to this minister and the devolution of his functions to the Secretary of State see PARA 603 ante.

15 Ie by a provision of the scheme having effect by virtue of any of the provisions of ibid s 18(2)(a)-(e) (as amended): see heads (1)-(5) in the text.

16 Ibid s 18(2)(f).

17 Ibid s 18(2)(g). This provision also confers the power of transferring: (1) the members of the body of constables in question to another such body or bodies (whether or not maintained by another or other of those authorities or by a body constituted by the scheme) (s 18(2)(g)(i)); and (2) property, rights or liabilities vested for the purposes of the dissolved body in the authority by which it was maintained to an authority by which a body of constables to which any of the members of the dissolved body are transferred is or is to be maintained (s 18(2)(g)(ii)). As to the maintenance of police forces by harbour authorities see PARA 759 post.

18 Ibid s 18(2)(h) (amended by the Docks and Harbours Act 1966 s 43(1)). The other persons mentioned are those who are determined in accordance with the scheme to be such as would have been transferred by it had they been serving when it comes into operation and their spouses and dependants: Harbours Act 1964 s 18(2)(h). The reference to rights as respects pensions, gratuities or other like benefits in s 18(2)(h) (as amended) is to be construed as including a reference to all forms of right to or eligibility for the present or future payment of a pension, gratuity or other like benefit, and any expectation of the accruer of such a benefit under any customary practice, and any right of allocation in respect of the present or future payment of such a benefit and to the return of contributions to a pension fund: Docks and Harbours Act 1966 s 43(2). If at any time it appears to the Secretary of State that any provision of a harbour reorganisation scheme which has effect under the Harbours Act 1964 s 18(2)(h) (as amended), and adjusts the rights of a person, operates or is likely to operate so as to put that person in a worse position than he would have been in if the provision had not been included in the scheme, the Secretary of State may by order amend the scheme in such manner as appears to him to secure that that person is or will be in no such worse position: s 18(7). This power to make an order is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 54(1), (2). Such orders are not recorded in this work.

19 Ie any provision of the scheme having effect by virtue of any of the provisions of ibid s 18(2)(a)-(h) (as amended) (see heads (1)-(8) in the text): s 18(2)(i). This reference to s 18(2)(a)-(h) is to be construed as including a reference to the Docks and Harbours Act 1966 s 42(1) (see the text to note 22 infra): s 42(4)(a).

20 Harbours Act 1964 s 18(2)(i) (amended by the Transport Act 1981 Sch 6 para 3). The supplementary, consequential or incidental provision may include, without prejudice to the generality of those words, provision for repealing or amending any statutory provision of local application affecting the group or any of the harbours comprised in it: Harbours Act 1964 s 18(2)(i) (as so amended). By virtue of s 18(2)(i) (as amended) the scheme may also include provision for the settlement by a court or otherwise of any dispute or other matter arising in connection with any provision of the scheme: Docks and Harbours Act 1966 s 45.

21 Ibid s 43(3). Harbour reorganisation schemes, being of local application only, are not noted in this work.

22 See ibid s 42(1). The provisions which may be included are: (1) provisions imposing duties or conferring powers for any of the objects specified in the Harbours Act 1964 Sch 2 para 3(a)-(c) (as amended) (see PARA 628 ante); (2) provisions for any of the objects specified in Sch 2 paras 6-17 (as amended) (see PARA 628 ante); (3) provisions which may be included in a harbour revision order by virtue of s 14(3) (as amended) (see PARA 629 ante): Docks and Harbours Act 1966 s 42(1)(a)-(c).

23 For the meaning of 'land' see PARA 605 note 8 ante. If the scheme includes, by virtue of ibid s 42 (see note 22 supra), a provision authorising the compulsory acquisition of land, then that provision is to be treated for the purposes of the Harbours Act 1964 s 18(3) (as amended) as a provision transferring an interest in land: Docks and Harbours Act 1966 s 42(2). As to the compulsory acquisition of land generally see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.

- 24 Harbours Act 1964 s 18(3) (amended by the Transport and Works Act 1992 s 63(1), Sch 3 para 4).
- 25 For the meaning of 'Crown or duchy interest' see PARA 629 note 23 ante.
- 26 It acquired compulsorily by virtue of the Harbours Act 1964.
- 27 Ibid s 52(1) (extended by the Docks and Harbours Act 1966 s 42(4)(b): see PARA 629 note 25 ante). For the meaning of 'the appropriate authority' see PARA 629 note 26 ante.
- 28 See the Harbours Act 1964 s 53 (extended by the Docks and Harbours Act 1966 s 42(4)(b): see PARA 629 note 27 ante).

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/5. HARBOUR ORDERS AND SCHEMES/(4) HARBOUR REORGANISATION SCHEMES/650. Submission of harbour reorganisation schemes.

650. Submission of harbour reorganisation schemes.

The submission to the Secretary of State¹ of a harbour reorganisation scheme² is effected by depositing with him not less than six copies of the scheme together with not less than six copies of any map or maps which, if the scheme is confirmed in the form submitted, will be required to be annexed to it³. Where a harbour reorganisation scheme is submitted to the Secretary of State, he must take it into consideration, and if he decides that it should proceed⁴, he must publish by Gazette and local advertisement⁵ and by such other means, if any, as he thinks fit a notice: (1) stating that the scheme has been submitted to him; (2) containing a concise summary of it, and, if it provides for transferring interests in land⁶, a general description of the land in which interests are to be transferred; (3) naming a place where a copy of the scheme and, if copies of a map or maps were deposited with the scheme, a copy of the map or maps may be seen at all reasonable hours; and (4) stating that any person⁷ who desires to make to him objection to the scheme should do so in writing⁸, stating the grounds of his objection, before the expiration of the period of 42 days⁹ from the date (which must be specified) of the first local advertisement¹⁰.

If provision is included in the scheme for transferring interests in land¹¹, the Secretary of State must also, in the case of each parcel of land, serve on the owner¹² of each interest to be transferred a notice: (a) stating that the scheme has been submitted to the Secretary of State and includes provision transferring the interest in that parcel (describing it) of the person served; (b) naming a place where a copy of the scheme and a copy (on the like scale) of the map deposited with it on which the boundaries of that parcel are delineated may be seen at all reasonable hours; and (c) stating that, if the person served desires to make to the Secretary of State objection to the scheme so far as regards the inclusion in it of provision transferring his

interest in that parcel, he should do so in writing, stating the grounds of his objection, before the expiration of the period of 42 days from the date on which the notice is served on him¹³.

The Secretary of State must contemporaneously serve on each of the harbour authorities¹⁴ which between them are engaged in improving, maintaining or managing the several harbours comprised in the group and are not parties to the submission of the scheme, and, if a local lighthouse authority¹⁵ which is not a harbour authority is affected by the scheme, on that authority, a copy of the scheme together with: (i) a copy of any map, copies of which were deposited with the scheme; and (ii) a notice stating that the scheme has been submitted to him and that, if the authority served desires to make to the Secretary of State objection to the scheme, it should do so in writing, stating the grounds of its objection, before the expiration of the period of 42 days from the date on which the notice is served on it¹⁶.

1 The Harbours Act 1964 refers to 'the minister', who is defined as the Minister of Transport: Harbours Act 1964 s 57(1). As to this minister and the devolution of his functions to the Secretary of State see PARA 603 ante.

2 For the meaning of 'harbour reorganisation scheme', and as to the purposes for which a harbour reorganisation scheme may be made, see PARA 648 ante. As to the contents of harbour reorganisation schemes see PARA 649 ante. As to confirmation of harbour reorganisation schemes see PARA 651 post.

3 Harbours Act 1964 s 18(4)(a), Sch 4 para 1 (s 18(4)(a) substituted by the Transport Act 1981 s 18(1), Sch 6 para 6(2)). As to the circumstances in which a map or maps must be annexed to a harbour reorganisation scheme see the Harbours Act 1964 s 18(3); and PARA 649 ante.

4 Ibid Sch 4 para 2.

5 For the meaning of 'Gazette and local advertisement' see PARA 634 note 3 ante.

6 For the meaning of 'land' see PARA 605 note 8 ante.

7 For the meaning of 'person' see PARA 605 note 4 ante.

8 For the meaning of 'writing' see PARA 605 note 3 ante.

9 As to the reckoning of periods see PARA 634 note 8 ante.

10 Harbours Act 1964 Sch 4 para 2(a). 'First local advertisement', unless the context otherwise requires, means, in relation to the publication of a notice as respects a harbour or group of harbours, the first publication of the notice in a local newspaper circulating in the locality where the harbour or group is situate: s 57(1). For the meaning of 'harbour' see PARA 611 ante. If a provision authorising the execution of works on any land is included in a harbour reorganisation scheme by virtue of the Docks and Harbours Act 1966 s 42 (as amended) (see PARA 649 ante), the notice required to be published by the Harbours Act 1964 Sch 4 para 2(a) must contain, in addition to the other matters required to be contained in the notice, a general description of the nature of the works and the land upon which it is proposed to execute them: Docks and Harbours Act 1966 s 42(3).

11 If the scheme includes, by virtue of ibid s 42 (as amended) (see PARA 649 ante), a provision authorising the compulsory acquisition of land, then that provision is to be treated for the purposes of the Harbours Act 1964 Sch 4 (as amended) as a provision transferring an interest in land: Docks and Harbours Act 1966 s 42(2) (amended by the Transport Act 1981 Sch 6 para 6(8)). As to compulsory acquisition of land generally see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.

12 For the meaning of 'owner' see PARA 634 note 7 ante. As to the service of documents see PARA 761 post.

13 Harbours Act 1964 Sch 4 para 2(b).

14 For the meaning of 'harbour authority' see PARA 619 ante.

15 For the meaning of 'local lighthouse authority' see PARA 611 note 1 ante.

16 Harbours Act 1964 Sch 4 para 2(d) (amended by the Transport Act 1981 s 15(2), Sch 5 para 14(1), (5)).

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

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651. Confirmation of harbour reorganisation schemes.

Where the consideration and notification requirements applying in the case of a harbour reorganisation scheme¹ submitted to the Secretary of State² have been complied with³ and the time for the due making to him of objection to the scheme has elapsed, the following provisions⁴ apply in relation to the confirmation of the scheme⁵. The Secretary of State may not confirm a harbour reorganisation scheme if any harbour⁶ comprised in the group to which the scheme relates is a fishery harbour⁷.

If objections to the scheme were duly made to the Secretary of State and have not been withdrawn, he must, unless he decides that the scheme is not to proceed further, cause an inquiry⁸ to be held with respect to each objection so made and not withdrawn unless, in his opinion, it is frivolous or too trivial to warrant the holding of an inquiry with respect to it⁹. However, if an objection is made to any provision of the scheme authorising the compulsory purchase of land¹⁰, then, instead of causing an inquiry to be held, the Secretary of State may afford an opportunity to the objector of appearing before and being heard by a person appointed by the Secretary of State for the purpose¹¹.

If after considering the objections (if any) made and not withdrawn, and the reports of any person who held an inquiry and any person appointed for the purpose of hearing an objector, the Secretary of State then decides to confirm the scheme, he may by order¹² confirm it without modifications or, subject to certain restrictions¹³, with such modifications as he thinks fit¹⁴. So soon as may be after a harbour reorganisation scheme has been confirmed by the Secretary of State, he must publish by Gazette and local advertisement¹⁵ a notice stating that it has been confirmed and naming a place where a copy of it in the form in which it was confirmed may be inspected at all reasonable hours¹⁶. He must also serve¹⁷ a copy of the scheme in that form on each authority on which a copy of the scheme as submitted to him was duly¹⁸ served¹⁹.

The scheme as confirmed is subject to special parliamentary procedure²⁰. A harbour reorganisation scheme may be challenged on certain grounds²¹.

1 For the meaning of 'harbour reorganisation scheme', and as to the purposes for which a harbour reorganisation scheme may be made, see PARA 648 ante. As to the contents of harbour reorganisation schemes see PARA 649 ante.

2 The Harbours Act 1964 refers to 'the minister', who is defined as the Minister of Transport: Harbours Act 1964 s 57(1). As to this minister and the devolution of his functions to the Secretary of State see PARA 603 ante.

3 I.e. where effect has been given to ibid Sch 4 para 2 (as amended): see PARA 650 ante.

4 I.e. the provisions of ibid Sch 4 para 3(5)-(8) (as amended): see the text and notes 8-14 infra.

5 Ibid s 18(4)(a), Sch 4 para 3(1) (s 18(4) substituted by the Transport Act 1981 s 18(1), Sch 6 para 6(2)).

6 For the meaning of 'harbour' see PARA 611 ante.

7 Harbours Act 1964 s 18(6) (amended by the Transport Act 1981 Sch 6 para 6(3)). For the meaning of 'fishery harbour' see PARA 612 ante.

8 As to the provisions governing inquiries see PARA 760 post.

9 Harbours Act 1964 Sch 4 para 3(5) (amended by the Transport Act 1981 s 40(1), Sch 12). The Secretary of State may, for the purposes of the Harbours Act 1964 Sch 4 para 3 (as amended), disregard an objection to the scheme unless it states the grounds on which it is made; and he may disregard for those purposes such an objection so far as regards the inclusion in the scheme of a provision transferring interests of a person in any property if he is satisfied that the objection relates exclusively to matters in respect of which compensation falls to be provided under the scheme and that the scheme is so framed as to enable those matters to be properly dealt with: Sch 4 para 3(8). For the meaning of 'person' see PARA 605 note 4 ante.

10 For the meaning of 'land' see PARA 605 note 8 ante. As to compulsory acquisition of land generally see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.

11 Docks and Harbours Act 1966 s 42(2)(a) (amended by the Transport Act 1981 Sch 12 Pt II). If the objector avails himself of the opportunity afforded to him, the Secretary of State must also afford the same opportunity to any person who submitted the scheme and any other person to whom it appears to the Secretary of State expedient to afford it: Docks and Harbours Act 1966 s 42(2)(a) (as so amended). This provision refers to 'the minister'; but see note 2 supra.

12 The power to make an order under this provision is exercisable by statutory instrument: Harbours Act 1964 s 54(1).

13 Where the Secretary of State proposes to confirm the scheme with modifications which appear to him substantially to affect the character of the scheme as submitted to him, he must take such steps as appear to him to be sufficient and reasonably practicable for informing those who submitted it and other persons likely to be concerned; and he may not confirm the scheme until such period for consideration of, and comment upon, the proposed modifications by the persons so informed by him as he thinks reasonable has elapsed: *ibid* Sch 4 para 3(7). He may not confirm the scheme subject to a modification that results in its including a provision transferring an interest of a person in property that was not described in the scheme as submitted to him as being property in which interests of that person were subject to be transferred unless that person consents to its being so confirmed: Sch 4 para 3(7).

14 *Ibid* Sch 4 para 3(6) (amended by the Transport Act 1981 s 15(2), Sch 5 para 14(1), (4)). Where a harbour reorganisation scheme is submitted to the Secretary of State and includes provision authorising the compulsory acquisition of land which includes land which has been acquired by statutory undertakers for the purposes of their undertaking, then the Harbours Act 1964 Sch 3 para 25 (as substituted) (which provides for a restriction on the making of harbour revision orders which include provision for compulsory acquisition of land of statutory undertakers: see PARA 639 ante) applies in relation to the submission to the Secretary of State of the scheme as it applies to an application for a harbour revision order: Docks and Harbours Act 1966 s 42(2)(b) (amended by the Transport Act 1981 Sch 6 para 6(8); and the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 15(5), Sch 4 para 1).

15 For the meaning of 'Gazette and local advertisement' see PARA 634 note 3 ante.

16 Harbours Act 1964 Sch 4 para 4. If a map or maps is or are annexed to the scheme, the notice must also state where a copy of the map, or copies of the maps, may be inspected: Sch 4 para 4.

17 As to the service of documents see PARA 761 post.

18 *Ie* in compliance with a requirement imposed by the Harbours Act 1964 Sch 4 para 2(d) (as amended): see PARA 650 ante.

19 *Ibid* Sch 4 para 4 (amended by the Transport Act 1981 Sch 12 Pt II). If a map or maps is or are annexed to the scheme, the Secretary of State must also serve on each authority a copy of the map or copies of the maps: Harbours Act 1964 Sch 4 para 4 (as so amended).

20 *Ibid* s 18(4) (as substituted: see note 5 supra). As to special parliamentary procedure see the Statutory Orders (Special Procedure) Act 1945; and PARLIAMENT vol 34 (Reissue) PARA 912 et seq.

21 See the Harbours Act 1964 s 44 (as substituted and amended); and PARA 655 post.

UPDATE**628-655 Harbour Orders and Schemes**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

651 Confirmation of harbour reorganisation schemes

NOTE 12--See also Harbours Act 1964 s 54(3), (4) (added by Marine and Coastal Access Act 2009 Sch 21 para 3(2)).

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652. Making of harbour reorganisation schemes by the Secretary of State of his own motion.

The procedure for the making of harbour reorganisation schemes¹ by the Secretary of State² of his own motion is the same as that for confirming harbour reorganisation schemes submitted him³, subject to certain modifications⁴.

A harbour reorganisation scheme made by the Secretary of State is subject to special parliamentary procedure⁵. A harbour reorganisation scheme made by the Secretary of State may be challenged on certain grounds⁶.

1 For the meaning of 'harbour reorganisation scheme', and as to the purposes for which a harbour reorganisation scheme may be made, see PARA 648 ante. As to the contents of harbour reorganisation schemes see PARA 649 ante.

2 As to the Secretary of State see PARA 603 ante.

3 I.e. the procedure set out in the Harbours Act 1964 s 18(4)(a), Sch 4 paras 1-4 (as amended): see PARAS 650-651 ante.

4 Ibid s 18(4)(b) (s 18(4) substituted by the Transport Act 1981 s 18, Sch 6 para 6(2)). The modifications are as follows:

16 (1) references to confirming a scheme are construed as references to making a scheme (Harbours Act 1964 s 18(4)(b), Sch 4 para 5 (s 18(4)(b) as so substituted; and Sch 4 paras 5-9 substituted by the Transport Act 1981 Sch 6 para 6(7));

17 (2) the Harbours Act 1964 Sch 4 para 1 (see PARA 650 ante) is omitted (Sch 4 para 6 (as so substituted));

18 (3) in Sch 4 para 2 (as amended) (see PARA 650 ante):

1. (a) for the words 'where a harbour reorganisation scheme is submitted to the Secretary of State he must take it into consideration and, if he decides that it should proceed' there are substituted 'where the

Secretary of State proposes to make, of his own motion, a harbour reorganisation scheme' (Sch 4 para 7(a) (as so substituted));

- 1
2. (b) for the words 'has been submitted to' wherever occurring there are substituted the words 'is proposed to be made by' and in Sch 4 para 2(d) (as amended) the words 'and are not parties to the submission of the scheme' are omitted (Sch 4 para 7(b) (as so substituted));
- 2
3. (c) for any reference in Sch 4 para 2(a), (b) or (d) (as amended) to a map deposited with the scheme there is substituted a reference to a map to be annexed to the scheme (Sch 4 para 7(c) (as so substituted));
- 3
- 19 (4) in Sch 4 para 3 (as amended) (see PARA 651 ante):
4. (a) in Sch 4 para 3(1) for the words 'submitted to' there are substituted the words 'proposed to be made by' (Sch 4 para 8(a) (as so substituted));
- 4
5. (b) in Sch 4 para 3(7) for the words 'as submitted to him' there are substituted the words 'as served under Sch 4 para 2(d) above on the authorities there mentioned', and there are omitted the words 'that submitted the scheme to him' and the words 'that submitted the scheme' (Sch 4 para 8(b) (as so substituted));
- 5
- 20 (5) in Sch 4 para 4 (as amended) (see PARA 651 ante) for the words 'submitted to' there are substituted the words 'proposed to be made by' (Sch 4 para 9 (as so substituted)).
- 5 Ibid s 18(4) (as substituted: see note 4 supra). As to special parliamentary procedure see the Statutory Orders (Special Procedure) Act 1945; and PARLIAMENT vol 34 (Reissue) PARA 912 et seq.
- 6 See the Harbours Act 1964 s 44 (as substituted and amended); and PARA 655 post.

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/5. HARBOUR ORDERS AND SCHEMES/(4) HARBOUR REORGANISATION SCHEMES/653. Compensation for loss of office.

653. Compensation for loss of office.

The Secretary of State¹ must by regulations² make provision requiring such person or body³ as may be determined by or under the regulations to pay compensation to or in respect of persons who are, or but for any national service⁴ of theirs would be, the holders of such situation, place or employment as may be prescribed and suffer loss of employment or loss or diminution of emoluments or pension rights⁵ in consequence of any provisions of a harbour reorganisation scheme⁶.

Pursuant to this obligation, the Harbours Reorganisation (Compensation to Employees) Regulations 1967 have been made⁷. The regulations make provision for entitlement to compensation, defining the persons to whom the regulations apply⁸ and the grounds on which every such person is entitled to have his case considered for the payment of compensation in accordance with the provisions of the regulations⁹. The regulations provide for resettlement compensation for loss of employment¹⁰, as well as for long-term compensation for loss of employment or loss or diminution of emoluments¹¹, and for retirement compensation and payments on death for loss or diminution of pension rights¹². There are also provisions for adjustment¹³, review¹⁴ and compounding of compensation¹⁵. The regulations lay down the procedure for making claims¹⁶ and provide for the right of a claimant to refer a decision of the compensating authority to a tribunal¹⁷.

1 The Harbours Act 1964 s 19 refers to 'the minister', who is defined as the Minister of Transport: s 57(1). As to this minister and the devolution of his functions to the Secretary of State see PARA 603 ante.

2 The power to make regulations is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: *ibid* s 54(1), (2).

3 I.e. a person or body subject to any of the provisions of a harbour reorganisation scheme: *ibid* s 19(1). For the meaning of 'person' see PARA 605 note 4 ante; and for the meaning of 'harbour reorganisation scheme' see PARA 648 ante.

4 For the meaning of 'national service' see PARA 630 note 11 ante.

5 The reference in the Harbours Act 1964 s 19(1) to pension rights is to be construed as including a reference to all forms of right to or eligibility for the present or future payment of a pension, gratuity or other like benefit, and any expectation of the accrual of such a benefit under any customary practice, and any right of allocation in respect of the present or future payment of such a benefit and to the return of contributions to a pension fund: Docks and Harbours Act 1966 s 43(2).

6 Harbours Act 1964 s 19(1). Regulations made under s 19(1) may include provision as to the manner in which, and the person to whom, any claim to compensation is to be made, and for the determination of all questions arising under the regulations: s 19(4). Different regulations may be made in relation to different classes of persons, and any such regulations may be so framed as to have effect from a date earlier than that on which they are made; however, so much of any regulations as provides that any provision of them is to have effect from a date earlier than that on which they are made may not place any person other than a harbour authority in a worse position than he would have been in if the regulations had been so framed as to have effect only as from the date on which they are made: s 19(3). For the meaning of 'harbour authority' see PARA 619 ante.

7 I.e. the Harbours Reorganisation (Compensation to Employees) Regulations 1967, SI 1967/1889.

8 See *ibid* reg 3.

9 See *ibid* reg 4. The provisions of the regulations referred to in the text are regs 5-48: reg 4.

10 See *ibid* regs 6-11.

11 See *ibid* regs 12-18.

12 See *ibid* regs 19-34, 48.

13 See *ibid* regs 35-37.

14 See *ibid* reg 38.

15 See *ibid* reg 39.

16 See *ibid* regs 40-48.

17 See *ibid* reg 47.

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/5. HARBOUR ORDERS AND SCHEMES/(5) ORDERS AMENDING ACTS OF LOCAL APPLICATION/654. Power to amend Acts of local application.

(5) ORDERS AMENDING ACTS OF LOCAL APPLICATION

654. Power to amend Acts of local application.

The Secretary of State¹ may by order² repeal or amend any provision relating to a harbour³ which is contained in a local Act passed before 10 June 1964⁴, or in a provisional order⁵ confirmed or made before that date, where it appears to him that the provision is inconsistent with, or has become unnecessary in consequence of, any provision of the Harbours Act 1964⁶. Before making such an order the Secretary of State must consult with any harbour authority which appears to him to be concerned, other than an authority which made an application for the order⁷. The order may contain such transitional, supplemental or incidental provisions as appear to the Secretary of State to be expedient⁸.

1 The Harbours Act 1964 s 60 refers to 'the appropriate minister' which is defined, except in the case of the repeal or amendment of the provision relating to a fishery harbour, as 'the minister' (being the Minister of Transport: see s 57(1)), and in the case of the repeal or amendment of a provision relating to a fishery harbour is defined as the Minister of Agriculture, Fisheries and Food: see s 60(5). As to the devolution of functions to the Secretary of State see PARA 603 ante. In relation to Wales, all functions of a Minister of the Crown under s 60 relating to fishery harbours are transferred to the Welsh Ministers: see PARA 604 ante. For the meaning of 'fishery harbour' see PARA 612 ante.

2 The power to make an order under this provision is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: *ibid* s 54(1), (2). Orders made under s 60, being of local application, are not recorded in this work.

3 For the meaning of 'harbour' see PARA 611 ante.

4 Ie the date of the passing of the Harbours Act 1964.

5 For the meaning of 'provisional order' see PARA 619 note 1 ante.

6 Harbours Act 1964 s 60(1). The Secretary of State may also repeal or amend any provision in the Milford Haven Conservancy Act 1958: see the Harbours Act 1964 s 60(1). However, he may not make an order under s 60 repealing or amending any provision in a local Act the Bill for which was promoted, or in a provisional order which was applied for, by a harbour authority or by any body which became a harbour authority by virtue of the Act or order or whose functions under the Act or order have become exercisable by a harbour authority, except on the application of that authority: s 60(2). For the meaning of 'harbour authority' see PARA 619 ante.

7 *Ibid* s 60(3). As to the duty to consult see JUDICIAL REVIEW vol 61 (2100) PARA 627.

8 *Ibid* s 60(4).

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/5. HARBOUR ORDERS AND SCHEMES/(6) RIGHT TO CHALLENGE ORDERS AND SCHEMES/655. Limitation of the right to challenge orders and schemes.

(6) RIGHT TO CHALLENGE ORDERS AND SCHEMES

655. Limitation of the right to challenge orders and schemes.

A person¹ who desires to question a harbour revision order or a harbour empowerment order², an order about port appointments³ or a harbour reorganisation scheme confirmed or made by the Secretary of State⁴, on the ground that there was no power to make the order or to confirm or make the scheme, or that a requirement of the Harbours Act 1964 was not complied with in relation to it may, within six weeks⁵ from the date on which the order or scheme becomes operative, apply for the purpose to the High Court⁶.

On such an application the court may by interim order suspend the operation of the order or scheme, or of any of its provisions, either generally or so far as may be necessary for the protection of the applicant's interests, until the final determination of the proceedings⁷; and if satisfied that there was no power to make the order or confirm the scheme, or that the applicant's interests have been substantially prejudiced by a failure to comply with a requirement of the Harbours Act 1964, the court may quash the order or scheme, or any of its provisions, either generally or so far as may be necessary for the protection of the applicant's interests⁸.

Except as described above, a harbour revision order, a harbour empowerment order, an order about port appointments, or a harbour reorganisation scheme confirmed or made by the Secretary of State, may not, either before or after it is made or confirmed, be questioned in any legal proceedings whatever⁹.

¹ For the meaning of 'person' see PARA 605 note 4 ante.

² For the meaning of 'harbour revision order' see PARA 628 ante. For the meaning of 'harbour empowerment order' see PARA 645 ante. The right to challenge orders and schemes does not apply to orders and schemes confirmed by Act of Parliament under the Statutory Orders (Special Procedure) Act 1945 s 6 (see PARLIAMENT vol 34 (Reissue) PARA 925): see the Harbours Act 1964 s 44(1) (as substituted: see note 6 infra). Harbour revision orders and harbour empowerment orders are no longer subject to procedure under the Statutory Orders (Special Procedure) Act 1945.

³ I.e. an order under the Harbours Act 1964 s 15A (as added): see PARA 644 ante. Orders about port appointments are not subject to procedure under the Statutory Orders (Special Procedure) Act 1945.

⁴ As to harbour reorganisation schemes see PARA 648 et seq ante. All harbour reorganisation schemes are subject to procedure under the Statutory Orders (Special Procedure) Act 1945: see the Harbours Act 1964 s 18(4) (as substituted); and PARAS 651-652 ante.

5 As to the reckoning of periods see PARA 634 note 8 ante.

6 Harbours Act 1964 s 44(1), (4) (s 44 substituted by the Docks and Harbours Act 1966 s 44(8), Sch 2; and the Harbours Act 1964 s 44(1), (4) amended by the Transport Act 1981 ss 18(1), 40(1), Sch 6 paras 5(2), 6(4), Sch 12 Pt II). As to the procedure on such an application see CPR Sch 1 RSC Ord 94; and CIVIL PROCEDURE vol 12 (2009) PARA 1696 et seq.

7 Harbours Act 1964 s 44(1A)(a), (4) (s 44 as substituted (see note 6 supra); s 44(4) as amended (see note 6 supra)).

8 Ibid s 44(1A)(b), (4) (s 44 as substituted (see note 6 supra); s 44(4) as amended (see note 6 supra)).

9 Ibid s 44(3), (4) (s 44 as substituted (see note 6 supra); s 44(3) amended by the Transport Act 1981 Sch 6 para 5(2), Sch 12 Pt II; Harbours Act 1964 s 44(4) as amended (see note 6 supra)). As to the interpretation of provisions ousting the jurisdiction of the courts see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 21.

UPDATE

628-655 Harbour Orders and Schemes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

See Harbours Act 1964 ss 42A-42D (added by Marine and Coastal Access Act 2009 Sch 21 paras 3, 4) (delegation of certain functions; consent of Welsh Ministers or Secretary of State required for making of certain harbour orders).

655 Limitation of the right to challenge orders and schemes

NOTE 9--See also Harbours Act 1964 s 44(6)-(8) (added by SI 2009/269).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/6. PROVISION OF HARBOUR WORKS AND FACILITIES/656. Harbour works below high water mark.

6. PROVISION OF HARBOUR WORKS AND FACILITIES

656. Harbour works below high water mark.

The construction of harbour works below high water mark which obstruct the public right of navigation¹ without authority by or under statute is an actionable nuisance². The construction and maintenance of such works will usually be authorised by a harbour revision order or a harbour empowerment order³. They may also be authorised by a harbour reorganisation scheme⁴. Harbour works below high water mark are usually specifically authorised but the local legislation of some harbour authorities includes a general works power⁵. Statutory authority for such works at a harbour undertaken by a person other than the harbour authority may, in some cases, be conferred by a licence granted by the harbour authority under a provision in its local legislation which, while prohibiting the construction of such works at the harbour in question by persons other than the harbour authority except under, and in accordance with, a licence granted by the authority, authorises licensed works to be constructed notwithstanding any interference with the public right of navigation⁶. Where works below high water mark are authorised to be undertaken by the harbour authority, the authorising instrument usually includes provisions to prevent the works becoming a danger to navigation⁷.

1 As to the public right of navigation see PARA 615 ante; and WATER AND WATERWAYS vol 101 (2009) PARA 688 et seq.

2 *A-G v Terry* (1874) 9 LR Ch App 423. A work which obstructs navigation may not be a nuisance if it results in a direct public benefit, to the same public as use the navigation, which outweighs the inconvenience caused to them by the obstruction: *A-G v Terry* supra. See also *Orr-Ewing v Colquhoun* (1877) 2 App Cas 839, HL; *Earl of Iveagh v Martin* [1961] 1 QB 232, [1960] 2 All ER 668. It appears that a work below high water mark which does not materially interfere with a reasonable exercise of the public right of navigation is not a nuisance: *Crown Estate Comrs v Fairlie Yacht Slip Ltd* 1979 SC 156 at 178, Ct of Sess. As to public nuisance generally see NUISANCE vol 78 (2010) PARA 105 et seq.

3 As to harbour revision orders see PARAS 628-643 ante. As to harbour empowerment orders see PARAS 645-647 ante.

Formerly (ie before the enactment of the Harbours Act 1964) such works were authorised by: (1) a local Act of Parliament; or (2) a provisional order granted by a minister under the General Pier and Harbour Act 1861.

With regard to authorisation by local Acts of Parliament, the Harbours Act 1964 provided that, for the purposes of promotion of a Bill containing provision for any object which might be achieved by a harbour revision or empowerment order or a harbour reorganisation scheme, it should be deemed, notwithstanding the passing of that Act, that that object could not be achieved without new authority from Parliament: s 62(1) (s 62 repealed by the Transport and Works Act 1992 s 68(1), Sch 4 Pt II). While that provision remained in force, persons seeking statutory authority to carry out harbour works could accordingly choose between promoting a Bill (which, if enacted, would become a local Act of Parliament) and applying for a harbour revision or empowerment order (or, rarely if at all in practice, making and submitting for confirmation a harbour reorganisation scheme which included provision for such authority). Since the repeal of the Harbours Act 1964 s 62, a work which could be authorised by a harbour revision or empowerment order (or by a harbour reorganisation scheme) cannot now be achieved by the promotion of a Bill.

As to authorisation of harbour works by provisional order under the General Pier and Harbour Act 1861, no application for such an order made after 30 September 1964 might be entertained by a minister in a case where he was satisfied that the objects to be achieved by the order could be achieved by a harbour revision or harbour empowerment order or by a harbour revision and harbour empowerment order combined: see the Harbours Act 1964 s 17(3) (repealed by the Transport and Works Act 1992 Sch 4 Pt II). In view of this provision and of the maximum limit of £100,000 on expenditure, the scope for making provisional orders for harbour works became very limited. The General Pier and Harbour Act 1861 (and thus the procedure for applying under that Act for provisional orders for works) was finally repealed by the Transport and Works Act 1992 Sch 4 Pt II.

4 As to harbour reorganisation schemes see PARAS 648-653 ante. In practice it would be unusual for such a scheme to authorise the construction of works.

5 An example of such a general works power is the Sealink (Transfer of Heysham Harbour) Harbour Revision Order 1991, SI 1991/1258, art 10. As to harbour authorities see PARA 619 et seq ante.

6 See eg ibid arts 18, 20. See also *Tate & Lyle Industries Ltd v Greater London Council* [1983] 2 AC 509 at 532-533, [1983] 1 All ER 1159 at 1167, HL, per Lord Templeman (concerning the licensing provisions contained in the Port of London (Consolidation) Act 1920 s 243 (repealed)). The Port of London (Consolidation) Act 1920 s 243 (repealed) has been replaced by the Port of London Act 1968 s 66(1)(a) which, like most modern works licensing powers, expressly provides that a licensed work may be constructed etc notwithstanding that it may interfere with the public right of navigation. The Port of London (Consolidation) Act 1920 s 243 (repealed) did not include such an express provision but it appears from Lord Templeman's speech, which referred to earlier authorities, that no action would lie for an interference with the public right of navigation by works licensed thereunder.

7 See eg the Sealink (Transfer of Heysham Harbour) Harbour Revision Order 1991, SI 1991/1258, arts 13-17. Similar provisions may be applied in relation to works at the harbour constructed by persons other than the harbour authority under a licence granted by the authority: see art 20(8).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/6. PROVISION OF HARBOUR WORKS AND FACILITIES/657. Dredging.

657. Dredging.

The local legislation of some harbour authorities contains a general power to dredge their harbours¹. Dredging related to specified works is sometimes specifically authorised by a harbour revision² or empowerment order³ (or formerly by a local Act of Parliament)⁴. The local legislation of harbour authorities often prohibits dredging at the harbour in question by persons other than the harbour authority except under, and in accordance with, a licence granted by the authority⁵.

1 See eg the Sealink (Transfer of Heysham Harbour) Harbour Revision Order 1991, SI 1991/1258, art 11. Such powers usually provide for materials (other than wreck within the meaning of the Merchant Shipping Act 1995: see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 987) taken up or collected in the course of dredging operations to be the property of the harbour authority and that they may be used, sold, removed, deposited or otherwise disposed of as the authority thinks fit, except that such materials are not to be placed below the level of high water except in such positions as the Secretary of State may approve and subject to such conditions and restrictions as he may impose. Some harbour authorities carry out dredging in reliance on their general powers for the management of their harbours. As to harbour authorities see PARA 619 et seq ante. As to the Secretary of State see PARA 603 ante. The disposal of dredged material on land above the high water mark requires a waste management licence under regulations made under the Environmental Protection Act 1990 s 35.

2 See eg the Sealink (Transfer of Heysham Harbour) Harbour Revision Order 1991, SI 1991/1258, arts 18, 21. As to harbour revision orders see PARAS 628-643 ante.

3 See eg the North Killingholme Haven Harbour Empowerment Order 1994, SI 1994/1693, art 10. As to harbour empowerment orders see PARAS 645-647 ante.

4 See PARA 656 ante.

5 See PARA 656 ante.

UPDATE

657 Dredging

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/6. PROVISION OF HARBOUR WORKS AND FACILITIES/658. Crown Estate Commissioners.

658. Crown Estate Commissioners.

Where, as is usually the case, the bed of a harbour where it is proposed to construct works below high water mark¹ is vested in the Crown², the developer, whether it is the harbour authority³ or another person, will have to purchase, or, more commonly, obtain a lease, of the site from the Crown Estate Commissioners⁴. When the bed of a harbour which is so vested is dredged, the Crown Estate Commissioners may require some payment in respect of dredged material.

1 See PARA 656 ante.

2 As to Crown ownership of land below high water mark see CROWN PROPERTY vol 12(1) (Reissue) PARA 242 et seq.

3 As to harbour authorities see PARA 619 et seq ante.

4 As to the Crown Estate Commissioners see CROWN PROPERTY vol 12(1) (Reissue) PARA 280 et seq.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/6. PROVISION OF HARBOUR WORKS AND FACILITIES/659. Control by Secretary of State of works below mean high water springs.

659. Control by Secretary of State of works below mean high water springs.

With some exceptions¹, the construction of works and certain other operations below the level of mean high water springs requires the consent of the Secretary of State² for the purpose of securing the safety of navigation³. If the Secretary of State is of the opinion that any operation for which an application is made to him will cause, or is likely to result in, obstruction or danger to navigation he must either refuse consent or give it subject to such conditions as he may think fit⁴. In certain circumstances the Secretary of State may disapply this requirement for his consent⁵.

1 See the Coast Protection Act 1949 s 35(1) (as amended); and WATER AND WATERWAYS vol 101 (2009) PARA 535. The exceptions include the carrying out of any dredging operations (including the deposit of dredged materials) authorised by any local Act in accordance with the provisions thereof (s 35(1)(c)); and any operation authorised by a harbour revision order or harbour empowerment order (s 35(1)(i) (added by the Transport and Works Act 1992 s 63(3))). As to harbour revision orders see PARAS 628-643 ante; and as to harbour empowerment orders see PARAS 645-647 ante.

2 The provision, as enacted, refers to the Minister of Transport. As to the devolution of his functions to the Secretary of State see PARA 603 ante. In relation to Wales the functions of the Secretary of State were transferred to the National Assembly for Wales (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1) and are now vested in the Welsh Ministers (see the Government of Wales Act 2006 s 162(1), Sch 11 para 30). As to the Welsh Ministers see PARA 604 ante.

3 See the Coast Protection Act 1949 s 34(1) (amended by the Merchant Shipping Act 1988 s 36). See also WATER AND WATERWAYS vol 101 (2009) PARA 533.

4 See the Coast Protection Act 1949 s 34(3). See also WATER AND WATERWAYS vol 101 (2009) PARA 534.

5 The Secretary of State may, either on the application of a harbour authority or of his own motion after consulting the harbour authority concerned, make regulations disapplying *ibid* s 34 (as amended) as respects any operations of a kind falling within the Secretary of State's jurisdiction under s 34 (as amended) which a harbour authority has power to license or otherwise regulate under its local legislation: see the Merchant Shipping Act 1988 s 37; and WATER AND WATERWAYS vol 101 (2009) PARA 536. As to harbour authorities see PARA 619 et seq ante.

UPDATE

659 Control by Secretary of State of works below mean high water springs

TEXT AND NOTES--Coast Protection Act 1949 ss 34, 35 repealed: Marine and Coastal Access Act 2009 Sch 8 para 1(2), Sch 22 Pt 2 (not yet in force).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/6. PROVISION OF HARBOUR WORKS AND FACILITIES/660. Control of deposits in the sea.

660. Control of deposits in the sea.

The dumping at sea of substances and articles must be licensed¹. With certain exceptions², the construction of harbour works in the sea must also be licensed³.

1 See the Food and Environment Protection Act 1985 s 5 (as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 525 et seq.

2 See the Deposits in the Sea (Exemptions) Order 1985, SI 1985/1699 (as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 527 et seq. Exemptions include the deposit in the sea of any article in connection with the provision of moorings or aids to navigation by a harbour authority or lighthouse authority or by any other person if the consent of a harbour or lighthouse authority is required (see Schedule para 19; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 528) and the deposit of any article or substance in the maintenance of harbour works if made on the site of the works (see Schedule para 20; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 528). As to harbour authorities generally see PARA 619 et seq ante.

3 See the Food and Environment Protection Act 1985 s 5 (as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 525.

UPDATE

660 Control of deposits in the sea

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/6. PROVISION OF HARBOUR WORKS AND FACILITIES/661. Planning control.

661. Planning control.

Harbour development is subject to planning control¹ but certain kinds of harbour development have been granted planning permission by development order². Such permitted development includes, subject to certain exceptions, development on operational land by statutory undertakers or their lessees carrying on, inter alia, a dock, pier or harbour undertaking for the purposes of shipping or in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, pier or harbour³. Subject to certain conditions, development authorised:

- 82 (1) by any local or private Act of Parliament; or
- 83 (2) by any order approved by both Houses of Parliament; or
- 84 (3) by any harbour revision order⁴ or harbour empowerment order⁵,

which designates specifically both the nature of the authorised development and the land on which it is to be carried out, is also permitted⁶.

Planning control does not usually extend below low water mark⁷.

1 ie control under the Town and Country Planning Act 1990: see TOWN AND COUNTRY PLANNING. The erection of any structure in, over or under a watercourse which is part of a main river requires the consent of the Environment Agency: see the Water Resources Act 1991 s 109; and WATER AND WATERWAYS vol 101 (2009) PARA 603. The provisions of European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p 1) establishing a framework for Community action in the field of water policy may apply to harbour works as

development affecting water status: see further WATER AND WATERWAYS vol 100 (2009) PARA 7. Harbour works which result in surface water drainage may require a discharge consent under the Water Resources Act 1991: see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 299 et seq.

2 See the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 (as amended); and TOWN AND COUNTRY PLANNING. As to permission granted by development order see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 252 et seq.

3 See ibid art 3, Sch 2 Pt 17 Class B. As to statutory undertakers see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1009; and as to operational land see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARAS 1010-1011.

4 See under the Harbours Act 1964 s 14 (as amended): see PARAS 628-643 ante.

5 See under ibid s 16 (as amended): see PARAS 645-647 ante.

6 See the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 11 Class A. Works carried out under a general works power in a harbour authority's local legislation are not therefore authorised by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 (as amended). The Secretary of State or a local planning authority (subject in most cases to the Secretary of State's approval) may give directions restricting development permitted by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418: see art 4 (as amended); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 258.

7 Although there is no authority directly in point, it seems that in England and Wales the sea bed between the jaws of the land, eg an estuary where it is possible to discern one shore from the other, will be within the body of a county and therefore subject to planning control: see Hale, *de Jure Maris*. See also WATER AND WATERWAYS vol 100 (2009) PARA 37. In Scotland it has been held that planning control never extends below low water mark: *Argyle and Bute District Council v Secretary of State for Scotland* 1977 SLT 33, Ct of Sess.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/6. PROVISION OF HARBOUR WORKS AND FACILITIES/662. Plans and works.

662. Plans and works.

Where any special Act¹ authorises the construction of works² and compulsory acquisition of land for those works, plans and books of reference are required to be deposited in accordance with the standing orders of either House of Parliament³ or the schedule to the special Act. If there is any omission, misstatement or wrong description in such plans or books of reference, the harbour authority⁴ may apply for a correction⁵. The harbour authority must not commence the execution of the harbour, dock or pier⁶ unless it has previously deposited with the proper officer of the county council a plan and section of all alterations from the original approved plan⁷. In making the harbour, dock or pier, the harbour authority must not deviate from the line of the works laid down in the plans more than the prescribed distance⁸.

1 See any special Act which incorporates the Harbours, Docks and Piers Clauses Act 1847 ss 7-13 (as amended). The special Act will now virtually always be a harbour revision order or harbour empowerment order: see PARA 656 ante. For the meaning of 'the special Act' see PARA 602 note 2 ante.

2 As to the consent for works on the foreshore etc see the Harbours, Docks and Piers Clauses Act 1847 s 12 (amended by the Transfer of Functions (Shipping and Construction of Ships) Order 1965, SI 1965/145, art 3(5), Sch 2). The Harbours, Docks and Piers Clauses Act 1847 only applies where it is incorporated in local legislation: see PARA 602 ante. In practice, ss 7-13 (as amended) are never incorporated in modern local legislation, and are therefore of little practical importance. Sections 7-9, which refer to certain parliamentary procedures, are not applicable in relation to harbour revision orders or harbour empowerment orders.

3 As to standing orders of the Houses of Parliament see PARLIAMENT vol 78 (2010) PARAS 849, 929.

4 The Harbours, Docks and Piers Clauses Act 1847 refers to 'the undertakers' (for the meaning of which see PARA 602 note 2 ante), but such persons will also be a harbour authority (for the meaning of which see PARA 619 ante).

5 See *ibid* s 7. As to the approval of altered plans see s 13.

6 For the meaning of 'harbour, dock or pier' see PARA 663 note 3 post.

7 See the Harbours, Docks and Piers Clauses Act 1847 ss 8, 9. Certified copies of plans and alterations etc are evidence of the contents: see s 10.

8 See *ibid* ss 11, 13.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/6. PROVISION OF HARBOUR WORKS AND FACILITIES/663. Construction of warehouses etc.

663. Construction of warehouses etc.

A number of harbour authorities¹ have express power to construct such warehouses, storehouses, sheds and other buildings and works as they may deem necessary for the accommodation of goods² shipped or unshipped within the harbour, dock or pier³, and to erect or provide such cranes, weighing and other machines, conveniences, weights and measures as they think necessary for loading, unloading, measuring and weighing the goods⁴. If a harbour authority provides cranes under this power it must provide proper staff for working the cranes at all reasonable times for the use of the public⁵. There are also provisions requiring the erection and maintenance of watchhouses, boathouses and huts for the use of officers of revenue and customs⁶. Some harbour authorities construct warehouses and provide other facilities of the kind mentioned above under general powers in their local legislation for the provision of port and harbour services and facilities⁷.

1 The Harbours, Docks and Piers Clauses Act 1847 s 21 confers such powers on 'the undertakers' (for the meaning of which see PARA 602 note 2 ante). In practice, when provisions of the Harbours, Docks and Piers Clauses Act 1847 are incorporated in a local Act or order relating to a particular harbour it is usually provided that the expression means the harbour authority for that harbour. The Harbours, Docks and Piers Clauses Act 1847 only applies where it is incorporated in local legislation: see PARA 602 ante. As to harbour authorities see PARA 619 et seq ante.

2 'Goods' includes, unless there is something in the subject or context repugnant to such construction, wares and merchandise of every description and all articles in respect of which rates and duties are payable under the special Act: *ibid* s 3. For the meaning of the 'the special Act' see PARA 602 note 2 ante. In practice, the special Act often contains a definition of 'goods', and charges in the nature of rates and duties are virtually always levied as ship, passenger or goods dues, under the Harbours Act 1964 s 26 (see PARA 666 post). Such charges are treated as rates for the purpose of incorporated provisions of the Harbours, Docks and Piers Clauses Act 1847: Harbours Act 1964 s 26(3).

3 'Harbour, dock or pier' means the harbour, dock or pier and the works connected therewith authorised to be constructed by the special Act: Harbours, Docks and Piers Clauses Act 1847 s 2. However, the special Act generally provides that the expression 'the harbour, dock or pier' in the incorporated provisions of the Harbours, Docks and Piers Clauses Act 1847 is to mean the particular port or harbour defined in the special Act.

4 *Ibid* s 21. A harbour authority may lease, for a term not longer than three years, or grant the use or occupation of any warehouses, buildings, wharfs, yards, cranes, machines or other conveniences provided by them, at such rents and upon such terms as may be agreed: see s 23. The restriction to terms of not more than three years is usually overridden by the local legislation of the harbour authority. The term 'other conveniences' in s 23 is not limited to works or things of the same nature, but includes a graving dock; and a lease of a graving dock for a term of ten years by an authority whose local legislation incorporates s 23 without modification is void: see *Glebe Sugar Refining Co Ltd v Greenock Port and Harbour Trustees* [1921] 2 AC 66, HL. As to the power to acquire additional land for such extraordinary purposes as the construction of warehouses, wharfs and other conveniences see the Harbours, Docks and Piers Clauses Act 1847 s 20.

5 Ibid s 22. The obligation only applies to cranes which are supplied pursuant to s 21: see the text and note 4 supra. See also *Garland and Flaxman v Wisbech Corp* [1962] 1 QB 151, [1961] 3 All ER 342.

6 See the Harbours, Docks and Piers Clauses Act 1847 ss 14, 15 (s 14 amended by the Commissioners for Revenue and Customs Act 2005 s 50(6), Sch 4 para 1). However, these provisions are now of limited importance. As to revenue and customs generally see CUSTOMS AND EXCISE.

7 See eg the Port of London Act 1968 s 5; and PARA 625 ante.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/6. PROVISION OF HARBOUR WORKS AND FACILITIES/664. Environmental assessment.

664. Environmental assessment.

Where the development in question is above low water mark¹ and is not specifically authorised by a harbour revision order or a harbour empowerment order², the normal planning procedures in relation to environmental assessment³ will apply⁴. Among the projects which, unless specifically authorised by an Act of Parliament, always require an environmental assessment are inland waterways and ports for inland waterway traffic which permit the passage of vessels of over 1,350 tonnes, and trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels over 1,350 tonnes⁵. Among the projects which, unless specifically authorised as mentioned above, are to be made subject to an environmental assessment where they are likely to have significant effects on the environment by virtue of factors such as their nature, size or location, are the construction of harbours and port installations, including fishing harbours (not being projects for which an environmental assessment is required as mentioned above)⁶, marinas⁷, and any change to or extension of such developments⁸ where that development is already authorised, executed or in the process of being executed, and the change or extension may have significant adverse effects on the environment⁹.

Where the development relates to harbour works¹⁰ of certain descriptions¹¹ below the low water mark of medium tides, there are specific procedures in relation to environmental assessment which apply¹². Provision is made for certain applications for consents or approvals required by or under statute¹³ to trigger consideration of whether the development in question requires an environmental assessment and, if so, for the appropriate procedures to be followed¹⁴.

1 As to the extent of normal planning controls see PARA 661 note 7 ante. As to the low water mark see WATER AND WATERWAYS vol 100 (2009) PARAS 31, 35.

2 As to harbour revision orders see PARAS 628-643 ante; and as to harbour empowerment orders see PARAS 645-647 ante.

3 Ie an assessment which satisfies the requirements of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended), which implement EC Council Directive 85/337 (OJ L175, 5.7.85, p 40) on the assessment of the effects of certain public and private projects on the environment (amended by EC Council Directive 97/11 (OJ L73, 14.3.1997, p 5); and EC Parliament and Council Directive 2003/35 (OJ L156, 25.6.2003, p 17)). EC Council Directive 85/337 (OJ L175, 5.7.85, p 40) (as amended) does not apply to 'projects the details of which are adopted by a specific act of national legislation': art 1(5). In the United Kingdom, therefore, it does not apply to a project which is specifically authorised by an Act of Parliament.

4 Ie the procedure under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 487 et seq.

5 See the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2(1), Sch 1 para 8.

6 See *ibid* Sch 2 para 10(g). To be subject to an environmental assessment the area of the works must exceed 1 hectare: Sch 2 para 10(g).

7 *Ibid* Sch 2 para 12(b). To be subject to an environmental assessment the area of the enclosed water surface must exceed 1,000 square metres: Sch 2 para 12(b).

8 *Ie* developments of a description listed in *ibid* Sch 1 or in Sch 2 column 1 paras 1-12: see Sch 2 para 13(a).

9 *Ibid* Sch 2 para 13(a).

10 'Harbour works' means works involved in the construction of a harbour or in the making of modifications to an existing harbour: Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 2(1). For the meaning of 'harbour' see *PARA* 611 *ante*. A person carries out harbour works if he carries out the whole or any part of such works or any operation in connection with or for the purposes of such works: reg 2(2). For the meaning of 'person' see *PARA* 605 note 4 *ante*.

11 *Ie* works which are:

- 21 (1) not subject to planning control pursuant to the Town and Country Planning Act 1990 (see *TOWN AND COUNTRY PLANNING*) or pursuant to orders made in exercise of powers conferred by that Act (Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 3(a));
- 22 (2) not specifically described in or authorised to be carried out by a harbour revision order made pursuant to the Harbours Act 1964 s 14 (as amended) (see *PARAS* 628-643 *ante*), a harbour empowerment order made pursuant to s 16 (as amended) (see *PARAS* 645-647 *ante*) or by a provisional order (Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 3(b));
- 23 (3) not specifically described in or authorised to be carried out by any enactment conferring powers to carry out works at a harbour (reg 3(c));
- 24 (4) not authorised by an order under the Transport and Works Act 1992 s 3 (see *WATER AND WATERWAYS* vol 101 (2009) *PARA* 801; and see *PARLIAMENT* vol 34 (Reissue) *PARA* 846) (Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 3(d));
- 25 (5) not the subject of a consent granted by the Crown Estate Commissioners under the Environmental Assessment (Salmon Farming in Marine Waters) Regulations 1988, SI 1988/1218 (revoked) (Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 3(e)); and
- 26 (6) not the subject of a consent granted by the Crown Estate Commissioners under the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999, SI 1999/367 (see *AGRICULTURE AND FISHERIES* vol 1(2) (2007 Reissue) *PARA* 943) (Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 3(f)).

12 See the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445. These regulations implement EC Council Directive 85/337 (OJ L175, 5.7.85, p 40) (as amended) (see note 3 *supra*) on the assessment of the effects of certain public and private projects on the environment, in respect of certain harbour works.

13 The specified applications are: (1) an application for consent to the carrying out of operations pursuant to the Coast Protection Act 1949 s 34 (as amended) (see *PARA* 659 *ante*; and *WATER AND WATERWAYS* vol 101 (2009) *PARA* 533 *et seq*); (2) notice from a harbour authority pursuant to regulations made under the Merchant Shipping Act 1988 s 37 (see *PARA* 659 *ante*; and *WATER AND WATERWAYS* vol 101 (2009) *PARA* 536) that application has been made for a licence to carry out operations; (3) an application for the approval of any such work as is referred to in the Coast Protection Act 1949 s 35(1)(g) (see *PARA* 659 *ante*; and *WATER AND WATERWAYS* vol 101 (2009) *PARA* 535); or (4) an application for approval required to be obtained in relation to any work (other than work specifically described or authorised by a harbour revision order, a harbour empowerment order or by a provisional such order, or by any enactment conferring powers to carry out works at a harbour) under any provision of: (a) a local Act; (b) a harbour revision order; or (c) a harbour empowerment not requiring consent under the Coast Protection Act 1949 s 34 (as amended): Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 5(1)(a)-(d). 'Harbour authority' means the harbour authority as defined in the Harbours Act 1964 (see *PARA* 619 *ante*) in relation to the harbour where the harbour works are proposed to be carried out: Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 2(1). For the meaning of 'enactment' see *PARA* 628 note 26 *ante*.

14 Provision is made for a developer who is minded to make an application relating to harbour works to be able to obtain a prior opinion on the information to be supplied in an environmental statement: see *ibid* reg 4. There are two different procedures on such an application, depending on whether or not a prior opinion has been obtained: see regs 5, 6. The developer must publish certain notices (see reg 7), and in transboundary cases provision is made for the involvement of other EEA states (see reg 8). There is provision for consultations and inquiries (see reg 9), the making of decisions on applications (see reg 10), the procedure where harbour works are carried out without a decision having been made (see reg 11), variation of consents (see reg 12), enforcement (see reg 13), and penalties (see reg 14). 'EEA state' means a state which is a contracting party to the EEA Agreement; and 'EEA Agreement' means the Agreement on the European Economic Area (Oporto, 2 May 1992; EC 7 (1992); Cm 2183), as adjusted by the Protocol (Brussels, 17 March 1993; EC 2 (1993); Cm 2183); Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445, reg 2(1).

UPDATE

664 Environmental assessment

TEXT AND NOTES 10-14--SI 1999/3445 regs 2-14 replaced by the Marine Works (Environmental Impact Assessment) Regulations 2007, SI 2007/1518 (amended by SI 2009/2258), which implements EEC Council Directive 85/337 (as amended) in relation to certain marine works.

Subject to SI 2007/1518 reg 9 (projects serving national defence purposes) and reg 10 (exceptions), an environmental impact assessment is required in relation to a regulated activity (1) if the applicant so agrees with the Secretary of State or the Welsh Ministers (reg 5); (2) if the Secretary of State or the Welsh Ministers so determine under reg 7 or 8 (reg 6). The Secretary of State or the Welsh Ministers must determine that an environmental impact assessment is required in relation to any regulated activity that is to be carried out in the course of (a) a project of a type specified by EEC Council Directive 85/337 Annex I; or (b) a project of a type specified by Annex II, if the Secretary of State or the Welsh Ministers conclude that the project is likely, because of its size, nature or location, to have significant effects on the environment: see SI 2007/1518 regs 7, 8, Sch 1. An applicant may request an opinion as to whether an environmental impact assessment is required: see reg 11, Sch 2. 'Regulated activity' means any activity, or proposed activity, for which a regulatory approval is, or would be, required: reg 2(1). 'Regulatory approval' means (i) a licence under the Food and Environmental Protection Act 1985 Pt 2 (ss 5-15); (ii) a consent under the Coast Protection Act 1949 s 34; or (iii) an approval or consent for harbour works under (A) a local Act; (B) such an Act read together with a notice given and published under the Harbours Transfer Act 1862 s 9; or (C) an order made under the Harbours Act 1964 s 14 or 16: SI 2007/1518 reg 2(1). As to the environmental impact assessment process, see regs 12-24, Schs 3-5. Providing false information for the purposes of obtaining a regulatory approval is an offence: see regs 25-27.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/6. PROVISION OF HARBOUR WORKS AND FACILITIES/665. Environmental controls for the protection of European sites.

665. Environmental controls for the protection of European sites.

The Conservation (Natural Habitats etc) Regulations 1994¹ implement the provisions of the Habitats Directive². In relation to marine areas³, any competent authority⁴ (including any dock, harbour, pier or lighthouse undertaker⁵) which has functions⁶ relevant to marine conservation must exercise those functions so as to secure compliance with the requirements of the Habitats Directive⁷.

The Conservation (Natural Habitats etc) Regulations 1994 include provision for the adaptation of planning and certain other controls for the protection of European sites⁸. In particular, they require that: (1) before deciding to undertake or to give any consent, permission or other authorisation for a plan or project which is likely to have a significant effect on a European site in Great Britain, a competent authority is to make an assessment of the implications for the site in view of the site's conservation objectives⁹; and (2) in light of the assessment, and subject to any considerations of overriding public interest¹⁰, the competent authority is to agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site¹¹. Where before the date on which a site becomes a European site a competent authority has decided to undertake or has given any consent, permission or other authorisation for a plan or project¹², the authority must review its decision, or the consent, permission or other authorisation, and either affirm it or modify or revoke it¹³. Special provisions are included for the protection of European marine sites¹⁴.

1 Ie the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716 (as amended): see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 728 et seq.

2 Ie EC Council Directive 92/43 (OJ L206, 22.7.92, p 7) on the conservation of natural habitats and of wild fauna and flora (amended by the Act of Accession to the European Union of Austria, Finland and Sweden (OJ L1, 1.1.95, p 1); and by EC Council Directive 97/62 (OJ L305, 8.11.97, p 42)): see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 2(1), 3(1) (amended by SI 1997/3055).

3 'Marine area' means any land covered (continuously or intermittently) by tidal waters or any part of the sea in or adjacent to Great Britain up to the seaward limit of territorial waters: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 2(1). For the meaning of 'Great Britain' see PARA 613 note 1 ante. As to territorial waters see WATER AND WATERWAYS vol 100 (2009) PARA 31 et seq.

4 'Competent authority' includes any minister, government department, public or statutory undertaker, or public body of any description or person holding a public office; and the expression also includes any person exercising any function of a competent authority in the United Kingdom: see *ibid* reg 2(1) (as amended), reg 6(1); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 728. For the meaning of 'United Kingdom' see PARA 613 note 1 ante.

5 Ie one of certain persons within the meaning of 'statutory undertaker'. 'Statutory undertaker' means, subject to the Town and Country Planning Act 1990 s 262(2)-(7) (as amended) (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1009), persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power, and a relevant airport operator (within the meaning of the Airports Act 1986: see AIR LAW vol 2 (2008) PARA 188) (ie the same meaning as in the National Parks and Access to the Countryside Act 1949: see s 114(1); the Town and Country Planning Act 1990 ss 262(1), 336(1); and the Interpretation Act 1978 s 17(2)(a)): Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 2(1).

6 'Functions' includes powers and duties: *ibid* reg 2(1).

7 See *ibid* reg 3(3). The requirement stated in the text applies, in particular, to functions under specified enactments, including the Dockyard Ports Regulation Act 1865 and the Harbours Act 1964: see the Conservation (Natural Habitats) Regulations 1994, SI 1994/2716, reg 3(3). Without prejudice to the provisions of reg 3(3), every competent authority, in the exercise of any of its functions, must have regard to the requirements of the Habitats Directive (see note 2 *supra*) so far as they may be affected by the exercise of those functions: Conservation (Natural Habitats) Regulations 1994, SI 1994/2716, reg 3(4).

8 See *ibid* Pt IV (regs 47-85) (as amended). For the meaning of 'European site' see regs 2(1), 10 (as amended); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 729.

9 See *ibid* reg 48(1)-(4); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 748.

10 Ie subject to *ibid* reg 49: see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 748.

11 See *ibid* reg 48(5)-(7); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 748.

12 Ie a plan or project to which *ibid* reg 48(1) (see the text to note 9 *supra*) would apply if it were to be considered at that time.

13 See *ibid* regs 50, 51; and *OPEN SPACES AND COUNTRYSIDE* vol 78 (2010) PARA 748.

14 See *ibid* regs 33-36; and *OPEN SPACES AND COUNTRYSIDE* vol 78 (2010) PARA 735. 'European marine site' means a European site which consists of, or so far as it consists of, marine areas: reg 2(1).

UPDATE

665 Environmental controls for the protection of European sites

NOTE 7--SI 1994/2716 reg 3(3) amended: see *WATER AND WATERWAYS* vol 101 (2009) PARA 679.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/7. HARBOUR CHARGES/(1) IMPOSITION OF CHARGES/666. Freedom of harbour authorities to levy harbour dues.

7. HARBOUR CHARGES

(1) IMPOSITION OF CHARGES

666. Freedom of harbour authorities to levy harbour dues.

Any statutory provision¹ made with respect to a particular harbour authority² in so far as it limits the authority's discretion as to the ship, passenger and goods dues³ chargeable by it at a harbour⁴, whether by specifying or providing for specifying the dues to be levied, or by fixing or providing for fixing dues or otherwise, has been repealed⁵. However, the repeal does not affect statutory provisions expressly providing for freedom from dues or in any other manner prohibiting the levying of a due⁶. Subject to this exception and to certain statutory provisions⁷, a harbour authority has power to demand, take and recover such ship, passenger and goods dues as it thinks fit at a harbour⁸.

Any provision of the Harbours, Docks and Piers Clauses Act 1847 referring to rates⁹, as incorporated in a statutory provision with respect to a harbour authority¹⁰, applies with any necessary modifications to charges¹¹ imposed by that authority by virtue of the above provisions as if they were rates payable under a statutory provision made with respect to it¹². Any enactment of a statutory provision made with respect to a harbour authority and referring, in whatever terms, to charges payable to the authority under a statutory provision made with respect to it or to charges so payable of a specified class applies, with necessary modifications, in so far as it does not cease to have effect¹³, to charges imposed by the authority by virtue of these provisions¹⁴ or, as the case may be, to charges so imposed of that class as if they were charges so payable or, as the case may be, charges so payable of that class¹⁵.

Any ship, passenger and goods dues in force immediately before 1 October 1964¹⁶ which were exigible at a harbour by a harbour authority, being dues imposed or deemed to have been imposed by or by virtue of a statutory provision made with respect to the authority, are now deemed to have been imposed¹⁷ by the Harbours Act 1964¹⁸.

1 For the meaning of 'statutory provision' see PARA 628 note 9 ante. In the Harbours Act 1964 s 26, 'statutory provision' includes an order confirmed by the Minister of Agriculture and Fisheries or the Minister of Agriculture, Fisheries and Food in pursuance of the Fishery Harbours Act 1915 s 2(3)(ii) (repealed): Harbours Act 1964 s 26(5). As to the Minister of Agriculture and Fisheries and the Minister of Agriculture, Fisheries and Food, and the devolution of functions to the Secretary of State, see PARA 603 ante.

2 For the meaning of 'harbour authority' see PARA 619 ante. In *ibid* s 26, 'harbour authority' does not include the British Waterways Board and any subsidiary of that board: Harbours Act 1964 ss 26(5)(a), 57(1) (amended by the Transport Act 1968 s 156(2), Sch 16 para 8(1); the Transport Act 1980 s 69, Sch 9 Pt III; the Transport Act 1981 ss 14(1), 40(1), Sch 4 para 1(1), Sch 12 Pt I; and the Transport Act 2000 s 274, Sch 31 Pt IV). For the meaning of 'subsidiary' see PARA 764 note 3 post (definition applied by the Harbours Act 1964 s 57(1) (as so amended); and the Transport Act 1968 s 159(1)). Nor does 'harbour authority' include a person carrying on an inland waterway undertaking to which the provisions of the Transport Act 1962 s 43 (as amended) (charges etc) apply by virtue of s 52(2) (as amended) (Harbours Act 1964 s 26(5)(b)), or a person carrying on an undertaking all or any of the charges of which are, under the statutory provisions relating to the undertaking, subject to revision by the Secretary of State and some other minister acting together (s 26(5)(c)). As to the Secretary of State see PARA 603 ante. This provision as enacted refers to 'the minister', who is defined as the Minister of Transport: see s 57(1). As to this minister and the devolution of his functions to the Secretary of State see PARA 603 ante. Charges by the British Waterways Board, and its subsidiaries, at its harbours (both ship, passenger and goods dues, and other charges for services and facilities, the latter being defined in very wide terms in the Transport Act 1962 s 92(1)) are levied under the Transport Act 1962 s 43 (as amended) which removes limitation on each charge under local enactments except for express provisions for freedom from charges or prohibition on the making of any charge: see WATER AND WATERWAYS vol 101 (2009) PARA 785. As to the British Waterways Board see WATER AND WATERWAYS vol 101 (2009) PARA 725 et seq.

3 For the meaning of 'ship, passenger and goods dues' see PARA 628 note 28 ante. For the meaning of 'goods' see PARA 611 note 5 ante. A mooring charge is not a ship due within the meaning of the Harbours Act 1964 s 57(1): *R v Carrick District Council, ex p Prankerd* [1999] QB 1119, [1999] 2 WLR 489.

4 I.e. a harbour which, in the exercise and performance of statutory powers and duties, the authority is engaged in improving, maintaining or managing: Harbours Act 1964 s 26(1). For the meaning of 'harbour' see PARA 611 ante. As to references to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties see PARA 605 note 5 ante.

5 *Ibid* s 26(1). This provision is, however, expressed to be subject to the subsequent provisions of the Harbours Act 1964. The provisions of particular relevance are the duty of harbour authorities to keep available a list of charges (see s 30 (as amended); and PARA 670 post), the right of objection to ship, passenger and goods dues (see s 31 (as amended); and PARA 671 post), and certain exclusions relating to s 31 (as amended) (see s 36 (as amended); and PARA 671 post).

Any statutory provision applying to a harbour authority has been repealed in so far as it prohibits, however it is expressed, the authority from discriminating in the matter of charges imposed by it in the exercise of its powers as such against any person in favour of any other person: s 38(1)(c) (amended by the Statute Law (Repeals) Act 1974). For the meaning of 'person' see PARA 605 note 4 ante. Where charges that might be made by a harbour authority in respect of any lighthouses, buoys or beacons were not ship, passenger or goods dues, any statutory limitation on the authority's discretion as to the making of such charges was removed by the Harbours Act 1964 s 29(1) (amended by the Statute Law (Repeals) Act 1974; and the Docks and Harbours Act 1966 s 46(4)). Such cases are thought to have been exceptional, eg in certain circumstances where the lighthouses etc were outside the authority's harbour within the meaning of the Harbours Act 1964 s 57(1) (see PARA 611 ante) (which is not necessarily the same as the harbour defined in the harbour authority's local legislation).

6 *Ibid* s 26(1). A harbour revision order may vary or extinguish any exemption from charges: see PARA 628 et seq ante. As to certain exemptions from dues see PARA 672 post.

7 I.e. subject to the subsequent provisions of the Harbours Act 1964: s 26(2).

8 *Ibid* s 26(2). In addition to the provisions of the Harbours Act 1964 mentioned in note 5 supra, a harbour authority's discretion under s 26(2) is affected by European Union law. This requires differential charges for certain oil tankers (see PARA 669 post). Differential charges which affect trade between member states of the European Union may be contrary to European Union competition rules. It appears that at a port which, having regard to its traffic, is held to be a substantial part of the internal market, a tariff which discriminates as between ships engaged exclusively in domestic coastal trades and ships which trade to other member states would be prohibited by European Union competition rules in so far as trade between member states is affected: *Case C-18/93 Corsica Ferries Italia SRL v Corpo dei Piloti del Porto di Genova* [1994] ECR I-1783, ECJ. As to European Union competition rules see COMPETITION vol 18 (2009) PARA 24 et seq.

9 For the meaning of 'rate' see PARA 616 note 4 ante.

10 The Harbours, Docks and Piers Clauses Act 1847 only applies where it is incorporated in local legislation: see PARA 602 ante.

11 For the meaning of 'charges' see PARA 628 note 35 ante.

12 Harbours Act 1964 s 26(3).

- 13 le in so far as it does not cease to have effect by virtue of *ibid* s 26(1): see the text to notes 1-6 *supra*.
- 14 le by virtue of *ibid* s 26.
- 15 *Ibid* s 26(3).
- 16 le immediately before *ibid* s 26(4) came into operation: see ss 26(4), 63(4); and the Harbours Act 1964 (Commencement) Order 1964, SI 1964/1424.
- 17 le by virtue of the Harbours Act 1964 s 26.
- 18 *Ibid* s 26(4).

UPDATE

666-668 Freedom of harbour authorities to levy harbour dues ... Combined charges

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/7. HARBOUR CHARGES/(1) IMPOSITION OF CHARGES/667. Harbour authority charges to be reasonable.

667. Harbour authority charges to be reasonable.

In place of any particular statutory limitation¹ imposed on the discretion of a harbour authority as to charges² that may be made by it at the harbour³, there is now imposed a statutory limitation that the charges are to be such as may be reasonable⁴. This provision applies to charges of any kind other than the following excepted charges:

- 85 (1) ship, passenger and goods dues⁵;
- 86 (2) charges ascribable to the running of a ferry service in or from the harbour⁶;
- 87 (3) statutory contributions assessed⁷ on several fisheries or their owners or occupiers⁸,
- 88 (4) duties on fishing licences⁹; and
- 89 (5) charges in respect of water abstraction licences or in respect of the water authorised to be abstracted by such licences¹⁰.

1 le any limitation imposed by a statutory provision made with respect to the harbour authority in particular: see the Harbours Act 1964 s 27(1). For the meaning of 'statutory provision' see PARA 628 note 9 *ante*. 'Harbour authority', in s 27 (as amended), has the same meaning as in s 26 (see PARA 666 note 2 *ante*): s 27(3). The British Waterways Board (which is not a harbour authority for the purposes of Harbours Act 1964 ss 26, 27 (as amended)) and its subsidiaries are subject to a requirement that the charges made for the use of services and facilities provided in, or in connection with, a harbour specified in the Transport Act 1962 s 50(1), Sch 9 (as amended) (other than ship, passenger and goods dues (as to which see PARA 628 note 28 *ante*)) must be such as may be reasonable: see Sch 9 para 5 (substituted by the Harbours Act 1964 s 39(3)). As to the British Waterways Board see WATER AND WATERWAYS vol 101 (2009) PARA 725 *et seq*.

2 For the meaning of 'charges' see PARA 628 note 35 *ante*. The reference in this provision to any limitation imposed on the discretion of a harbour authority as to charges of any description is to be construed as a reference to such a limitation imposed by specifying or providing for specifying the charges to be levied, or fixing or providing for fixing charges, or otherwise: Docks and Harbours Act 1966 s 46(1).

3 le at the harbour which, in the exercise and performance of statutory powers and duties, the authority is engaged in improving, maintaining or managing: see the Harbours Act 1964 s 27(1). For the meaning of 'harbour' see PARA 611 ante. As to references to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties see PARA 605 note 5 ante.

4 Ibid s 27(1). The limitation that charges are to be reasonable is not imposed where the original statutory obligation: (1) provides for freedom from charges (see also PARA 666 ante); or (2) prohibits in any other way the making of a charge; or (3) provides that the charges must be such as may be reasonable, by any form of words whatsoever: s 27(1). This provision only applies to charges which were subject to a statutory limitation when the Harbours Act 1964 came into force: see the text and note 1 supra. Many harbour authorities now have in their local legislation, passed after the Harbours Act 1964 came into force, an express power to make such reasonable charges for services and facilities as they think fit. See also, in relation to Associated British Ports (as to which see PARA 622 ante), the Transport Act 1981 s 8, Sch 3 para 20.

5 Harbours Act 1964 s 27(2)(a). As to the repeal of statutory limitations on the discretion of harbour authorities in respect of such dues see PARA 666 ante.

6 Ibid s 27(2)(b).

7 le contributions which by virtue of a provision included in an order under the Water Resources Act 1991 s 142 (as amended) fall to be assessed on several fisheries or the owners or occupiers thereof (see AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 940): Harbours Act 1964 s 27(2)(c) (s 27(2)(c), (e) amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 13(2)).

8 Harbours Act 1964 s 27(2)(c) (as amended: see note 7 supra).

9 Ibid s 27(2)(d). The duties referred to in the text are duties on licences to fish granted under the Salmon and Freshwater Fisheries Act 1923 s 61 (repealed): Harbours Act 1964 s 27(2)(d); Salmon and Freshwater Fisheries Act 1975 s 42(4). As to such fishing licences, and the duties payable in respect of them, see AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 864.

10 Harbours Act 1964 s 27(2)(e) (as amended: see note 7 supra). The licences referred to in the text are licences under the Water Resources Act 1991 Pt II Ch II (ss 24-72) (as amended) (see WATER AND WATERWAYS vol 100 (2009) PARA 214 et seq) to abstract water: Harbours Act 1964 s 27(2)(e) (as so amended).

UPDATE

666-668 Freedom of harbour authorities to levy harbour dues ... Combined charges

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

667 Harbour authority charges to be reasonable

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/7. HARBOUR CHARGES/(1) IMPOSITION OF CHARGES/668. Combined charges.

668. Combined charges.

Where a harbour authority¹ has power² to levy ship, passenger and goods dues³ or equivalent dues⁴, and to make other charges⁵, the authority may⁶ make a combined charge, that is to say

a single charge referable in part to matters for which ship, passenger and goods dues or equivalent dues may be levied⁷ and in part to matters for which other charges may be made⁸. A harbour authority may not make a combined charge where the person⁹ who would be liable to pay it objects to paying a combined charge or where a number of persons would be jointly and severally liable to pay the combined charge and any one of them objects to paying it, but without prejudice to the power of the authority to make separate charges in any such case¹⁰. A person may not, however, object to the payment of a combined charge where the charge has been previously incurred or incurred in pursuance of a prior agreement between that person and the authority¹¹.

1 For the meaning of 'harbour authority' see PARA 619 ante.

2 The power whether by virtue of the Harbours Act 1964 s 26 (see PARA 666 ante) or any other statutory provision: see s 27A(1) (s 27A added by the Transport Act 1981 s 18(1), Sch 6 para 8(1)). For the meaning of 'statutory provision' see PARA 628 note 9 ante.

3 For the meaning of 'ship, passenger and goods dues' see PARA 628 note 28 ante.

4 Harbours Act 1964 s 27A(1)(a) (as added: see note 2 supra). 'Equivalent dues' means dues exigible in respect of things other than ships for entering, using or leaving a harbour, including charges for marking or lighting the harbour: s 27A(4) (as so added). For an example of a power to levy such dues see the Port of London Act 1968 s 21(1). For the meaning of 'ship' see PARA 611 note 2 ante.

5 Harbours Act 1964 s 27A(1)(b) (as added: see note 2 supra). For the meaning of 'charges' see PARA 628 note 35 ante. As to the power to make reasonable charges for services and facilities see PARA 667 ante.

6 The subject to *ibid* s 27A(2) (as added): see the text to notes 9-10 *infra*.

7 As to matters for which ship, passenger and goods dues or equivalent dues may be levied see note 8 *infra*.

8 Harbours Act 1964 s 27A(1) (as added: see note 2 supra). There is no statutory definition or explanation of the distinction between 'matters for which ship, passenger and goods dues or equivalent dues may be levied' and 'matters for which other charges may be made'. The difference between dues and other port charges was, however, explained by a government minister during the parliamentary proceedings on the Bill for the Transport Act 1981 (which is the Act by which the Harbours Act 1964 s 27A was added): 'The 'dues' are levied on all port users in respect of the use of the basic or essential port and harbour, and reflect the authority's costs in the provision of the harbour infrastructure and the maintenance of approach channels, lights, buoys and beacons. They are essentially in the nature of a tax, an amount payable by a user, but not necessarily directly related to the services he receives . . . Other port charges . . . are levied for specific services provided to users, for example, for loading or unloading a ship or for the storage of goods, and they are related to the kind of services provided': 421 HL Official Report (5th series), 8 June 1981, col 13. Judicial explanation has been to the same effect: 'Historically it has long been a basic concept of harbour legislation that there are two forms of charge, to each of which are attached different incidents. The due payable for use of a harbour as a harbour is of the nature of a tax, whose payment entitles the person making the payment to use of the harbour (subject only to compliance with the byelaws) without interference by the harbour authority, and the payment of the tax is secured by provisions for distraint and the attachment of penalties in case of evasion of payment . . . These charges are distinguished from charges for the use of other ancillary (usually optional) services eg the use of a crane and mooring rights. The payment of charges for these services is not likewise secured': *R v Carrick District Council, ex p Pranker* [1999] Q.B. 1119 at 1128 per Lightman J. The minister's reference to 'dues' was, in its particular context, to ship, passenger and goods dues, but it is thought that it is in principle applicable also to equivalent dues.

9 For the meaning of 'person' see PARA 605 note 4 ante.

10 Harbours Act 1964 s 27A(2) (as added: see note 2 supra). The right of objection to ship, passenger and goods dues under s 31 (as amended) (see PARA 671 post) does not apply to combined charges: s 31(1) (amended by the Transport Act 1981 Sch 6 para 8).

11 Harbours Act 1964 s 27A(3) (as added: see note 2 supra).

UPDATE

666-668 Freedom of harbour authorities to levy harbour dues ... Combined charges

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/7. HARBOUR CHARGES/(1) IMPOSITION OF CHARGES/669. Reduced charges for oil tankers with segregated ballast tanks.

669. Reduced charges for oil tankers with segregated ballast tanks.

The following provisions cease to have effect on 31 December 2007¹.

Port and harbour authorities² and pilotage authorities³ within the European Union are required:

- 90 (1) to implement within the Union the Resolution adopted by the Assembly of the International Maritime Organisation⁴ in order to encourage the use of oil tankers⁵ with segregated ballast tanks⁶, including double hull oil tankers⁷ and oil tankers of an alternative design⁸; or
- 91 (2) to apply reduction schemes for levies charged on segregated ballast oil tankers⁹ different from, but in the spirit of, that Resolution¹⁰.

The requirement applies to oil tankers of a specified description¹¹. When assessing fees for such an oil tanker fully or partly based on gross tonnage¹² of the vessel, a port or harbour authority or a pilotage authority must either:

- 92 (a) exclude the tonnage of the segregated ballast tanks so as to base its calculations on the reduced gross tonnage¹³ indicated under the heading 'Remarks' of the International Tonnage Certificate (1969) of the vessel¹⁴; or
- 93 (b) ensure that the fee is at least 17 per cent lower than that for a tanker of the same gross tonnage without segregated ballast tanks¹⁵.

Where the fees are assessed otherwise than on the basis of gross tonnage, the authority must ensure that segregated ballast oil tankers receive treatment no less favourable than when fees are calculated in accordance with head (a) or head (b) above¹⁶. The authority must apply, for all segregated ballast oil tankers, only one of the systems mentioned above¹⁷.

1 See EC Parliament and Council Regulation 417/2002 (OJ L64, 7.3.2002, p 1) on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers, art 12 (which repeals EC Council Regulation 2978/94 (OJ L319, 12.12.94, p 1) as from that date).

2 'Port and harbour authority' means a public or private person which charges fees to ships for providing facilities and services to shipping: EC Council Regulation 2978/94 (OJ L319, 12.12.94, p 1) art 3(1)(h). The word 'fees' is used in the English language version of the EC Council Regulation, but in modern domestic legislation the word usually employed is 'charges'.

3 'Pilotage authority' means a public or private person entitled to render pilotage services to shipping: *ibid* art 3(1)(i). As to pilotage see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 562 et seq.

4 *Ie* Resolution A.747(18) adopted by the Assembly of the International Maritime Organisation on 4 November 1993.

5 'Oil tanker' means a ship constructed or adapted primarily to carry oil in bulk in its cargo spaces and includes a combination carrier and any chemical tanker, when it is carrying a cargo or part cargo of oil in bulk:

EC Council Regulation 2978/94 (OJ L319, 12.12.94, p 1) art 3(1)(a), (2), Annex II. 'Combination carrier' means a ship designed to carry either oil or solid cargoes in bulk: Annex II. 'Chemical tanker' means a ship constructed or adapted primarily to carry a cargo of noxious liquid substances in bulk and includes an oil tanker as defined in Annex I of Marpol 73/78 when carrying a cargo or part cargo of noxious liquid substances in bulk: Annex II. 'Marpol 73/78' means the International Convention for the Prevention of Pollution from Ships 1973 (London, 8 October to 2 November 1973; Misc 26 (1974); Cmnd 5748) and the Protocol of 1978 relating thereto (London, 1 June 1978 to 31 May 1979; Misc 27 (1978); Cmnd 7347) together with the amendments thereto in force at the date of adoption of EC Council Regulation 2978/94 (OJ L319, 12.12.94, p 1): art 3(1)(g).

6 'Segregated ballast tank' means a tank exclusively used for the carriage of segregated ballast: *ibid* art 3(1)(c). 'Segregated ballast' means the ballast water introduced into a tank which is completely separated from the cargo oil and oil fuel system, and which is permanently allocated to the carriage of ballast or to the carriage of ballast or cargoes other than oil or noxious substances as variously defined in the Annexes of Marpol 73/78: EC Council Regulation 2978/94 (OJ L319, 12.12.94, p 1) art 3(1)(b), (2), Annex II.

7 'Double hull oil tanker' means an oil tanker of which the entire cargo is protected by ballast tanks or spaces other than cargo and fuel oil tanks: *ibid* art 3(1)(e), (2), Annex II.

8 'Oil tanker of an alternative design' means: (1) a segregated ballast oil tanker, the design of which is such that the cargo and vapour pressure exerted on the bottom shell plating forming a single boundary between the cargo and the sea does not exceed the external hydrostatic water pressure; (2) an oil tanker which is designed according to methods that ensure at least the same level of protection against oil pollution in the event of collision or stranding and are approved in principle by the Marine Environment Protection Committee of the International Maritime Organisation based on guidelines developed by the Organisation: *ibid* art 3(1)(f), (2), Annex II.

9 'Segregated ballast oil tanker' means an oil tanker provided with segregated ballast tanks and certified by the government of the flag state or by other bodies entitled to do so on its behalf as an oil tanker provided with segregated ballast tanks: *ibid* art 3(1)(d). This compliance must be clearly stated by such authority in the relevant paragraph of the supplement to the International Oil Pollution Prevention Certificate: EC Council Regulation 2978/94 (OJ L319, 12.12.94, p 1) art 3(1)(d).

10 *Ibid* art 1.

11 The oil tankers which: (1) can carry segregated ballast in specially appointed tanks; (2) are designed, built, adapted, equipped and operated as segregated ballast oil tankers including double hull oil tankers and oil tankers of an alternative design; (3) meet the requirements of the International Convention on Tonnage Measurement of Ships 1969 (London, 23 June to 23 December 1969; TS 59 (1982); Cmnd 8716); and (4) hold the International Tonnage Certificate (1969): EC Council Regulation 2978/94 (OJ L319, 12.12.94, p 1) art 2. In the United Kingdom, the provisions of the International Convention on Tonnage Measurement of Ships 1969 are implemented by the Merchant Shipping (Tonnage) Regulations 1997, SI 1997/1510: see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 248 et seq.

12 'Gross tonnage' means the measure of the overall size of a ship determined in accordance with the provisions of the International Convention on Tonnage Measurement of Ships 1969: EC Council Regulation 2978/94 (OJ L319, 12.12.94, p 1) art 3(1)(j).

13 'Reduced gross tonnage' means the gross tonnage of an oil tanker arrived at when the gross tonnage of the segregated ballast tanks, as determined in accordance with the formula given in *ibid* Annex I para 4, is deducted from the entire gross tonnage of the vessel: art 3(1)(k).

14 *Ibid* art 5(1).

15 *Ibid* art 5(2).

16 *Ibid* art 5(3).

17 *Ibid* art 5(4).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/7. HARBOUR CHARGES/(1) IMPOSITION OF CHARGES/670. Duty of harbour authorities to keep lists of charges.

670. Duty of harbour authorities to keep lists of charges.

A list showing the ship, passenger and goods dues¹ for the time being exigible² by a harbour authority³ at a harbour which, in the exercise and performance of statutory powers and duties, it is engaged in improving, maintaining or managing⁴ must be kept at the harbour office⁵. The list must be open there during reasonable hours for inspection by any person⁶ without charge and copies of the list must be kept for sale at that office at a price not exceeding 5p for each copy⁷. No ship, passenger or goods dues so exigible⁸ may be levied by the harbour authority or board concerned if, at the time at which it is exigible, the authority or board is in default in compliance with the requirement⁹ of keeping a list of dues at the harbour office or the due is not shown in the list kept there at that time in compliance with that requirement¹⁰.

1 For the meaning of 'ship, passenger and goods dues' see PARA 628 note 28 ante.

2 le exigible under the Harbours Act 1964 s 26 (see PARA 666 ante). Section 30 (as amended) also applies to dues exigible by virtue of the Transport Act 1962 s 43 (as amended) (see WATER AND WATERWAYS vol 101 (2009) PARA 785) by the British Waterways Board at a harbour which, in the exercise and performance of statutory powers and duties, that Board is engaged in improving, maintaining or managing, except where the harbour in question is not specified in Sch 9: Harbours Act 1964 s 30(1)(b) (substituted by the Transport Act 1968 s 156(2), Sch 16; and amended by the Transport Act 1981 s 40, Sch 12 Pt I; and the Transport Act 2000 s 274, Sch 31 Pt IV). For the meaning of 'harbour' see PARA 611 ante. For the meanings of 'statutory powers' and 'statutory duties' see PARA 605 note 5 ante. As to the British Waterways Board see WATER AND WATERWAYS vol 101 (2009) PARA 725 et seq.

References in the Harbours Act 1964 s 30 (as amended) to the dues exigible by an authority or board are references to the amount exigible where no composition agreement applies and no specially agreed rebate is allowed: s 30(6) (added by the Transport Act 1981 s 18(1), Sch 6 para 8(2)).

3 For the meaning of 'harbour authority' see PARA 619 ante.

4 Harbours Act 1964 s 30(1)(a). As to references to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties see PARA 605 note 5 ante.

5 Ibid s 30(1). Any statutory provision other than one in the Harbours Act 1964 applying to a harbour authority has been repealed in so far as, however it is expressed, it requires a list of charges imposed by the authority in the exercise of its powers as such to be published: s 38(1)(b). Where a charge exigible by a harbour authority in its capacity as a local lighthouse authority is not a ship, passenger or goods due, the charge is to be treated for the purposes of the Merchant Shipping Act 1995 s 210(5) (which requires a list of local light dues to be kept by a local lighthouse authority which is not a harbour authority: see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1088) as if it were exigible or imposed under s 210(2): Docks and Harbours Act 1966 s 46(3); Interpretation Act 1978 s 17(2). For the meaning of 'local lighthouse authority' see PARA 611 note 1 ante; definition applied by the Docks and Harbours Act 1966 s 50(1).

6 For the meaning of 'person' see PARA 605 note 4 ante.

7 Harbours Act 1964 s 30(1) (amended by virtue of the Decimal Currency Act 1969 s 10(1)). A copy of a list which, in pursuance of this provision, is for the time being kept by a harbour authority at the office of a harbour which is not a fishery harbour (for the meaning of which see PARA 612 ante) must be supplied by the authority to the Secretary of State without charge: Harbours Act 1964 s 30(4) (amended by the Transport Act 1968 ss 156(2), 165(c), Sch 16 para 8(1), Sch 18 Pt III; and the Transport Act 1981 s 15(2), Sch 5 para 10(1)). As to the Secretary of State see PARA 603 ante. A copy of a list which, in pursuance of the Harbours Act 1964 s 30(1) (as amended), is for the time being kept by a harbour authority at the office of a fishery harbour must be supplied by the authority without charge to the Secretary of State or, if the fishery harbour is in Wales, to the Welsh Ministers: see s 30(4) (as so amended); and the Transfer of Functions (Fishery Harbours) Order 2001, SI 2001/3503, art 2(1)(b). As to the transfer to the Welsh Ministers of the functions under the Harbours Act 1964 s 30 (as amended) in relation to fishery harbours in Wales see PARA 604 ante.

8 le exigible as mentioned in the Harbours Act 1964 s 30(1)(a), (b) (as substituted and amended): see note 2 supra.

9 le in default in compliance with the requirement of ibid s 30(1) (as amended): see the text to notes 5-7 supra. This requirement does not apply to combined charges within the meaning of s 27A (as added) (see PARA 668 ante): s 30(5) (added by the Transport Act 1981 Sch 6 para 8(2)).

10 Harbours Act 1964 s 30(3) (amended by the Merchant Shipping Act 1995 s 314(1), Sch 12).

UPDATE

670-671 Duty of harbour authorities to keep lists of charges, Right of objection to ship, passenger and goods dues

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/7. HARBOUR CHARGES/(1) IMPOSITION OF CHARGES/671. Right of objection to ship, passenger and goods dues.

671. Right of objection to ship, passenger and goods dues.

Written¹ objection to ship passenger and goods dues² imposed by a harbour authority³ at a harbour which, in the exercise and performance of statutory powers and duties, the authority is engaged in improving, maintaining or managing⁴ may be lodged with the Secretary of State⁵ by a person appearing to him to have a substantial interest⁶ or a body representative of persons so appearing⁷. The objection must be expressed to be made on all or any of the following grounds:

- 94 (1) that the charge ought not to be imposed at all⁸;
- 95 (2) that the charge ought to be imposed at a rate lower than that at which it is imposed⁹;
- 96 (3) that, according to the circumstances of the case, ships¹⁰, passengers or goods¹¹ of a class specified in the objection ought to be excluded from the scope of the charge either generally or in circumstances so specified¹²;
- 97 (4) that, according to the circumstances of the case, the charge ought to be imposed, either generally or in circumstances specified in the objection, on ships, passengers or goods of a class so specified at a rate lower than that at which it is imposed on others¹³.

The Secretary of State must forthwith after the objection is lodged send a copy of it to the authority and must give notice¹⁴ to the objector that, as a condition precedent to the taking by the Secretary of State of further action, he must publish a notice¹⁵ in specified newspapers¹⁶ stating that:(a) he has lodged an objection and specifying the grounds on which it is made¹⁷; and (b) any person having a substantial interest, or a body representative of persons who have such an interest, who desires to make representations to the Secretary of State in the matter must do so in writing within the time specified in the notice, which must not be less than 42 days¹⁸ from its publication or first publication¹⁹. Where such a notice has been duly published, then so soon as practicable after the expiration of the time specified in it the Secretary of State must²⁰, unless the objection has been withdrawn before the expiration of that time and no written representations have been duly made to him by an appropriate person or body²¹, proceed to consideration of the charge and any representations made²². The Secretary of State must cause an inquiry²³ to be held with respect to the matter, unless satisfied that he can properly proceed to a decision without causing an inquiry to be held²⁴. Where written representations are made²⁵, the Secretary of State must send copies of them to the authority and, except where the objection has been withdrawn, to the objector²⁶. The Secretary of State

must not proceed to consideration of the charge until such a period for consideration of, and comment upon, the representations by the authority and by the objector (if the objection has not been withdrawn) as he thinks reasonable has elapsed²⁷.

Where the Secretary of State has complied with the statutory requirements as to consideration of the charge²⁸, he must either approve the charge or give to the authority a direction with respect to it²⁹. Where he approves the charge, he must set a limit, not later than the expiration of 12 months³⁰ from the date on which he approves it, to the period during which the approval is to be of effect, and give to the authority notice in writing that he has approved the charge, stating the limit set³¹. Where the Secretary of State gives a direction, the direction with respect to the charge must be such as would meet objections to it made on any of the prescribed grounds in heads (1) to (4) above³², whether that is or is not the ground, or is or is not included among the grounds, on which the objection³³ is expressed to be made³⁴. The direction must be in writing and must specify a date for its coming into operation and the period from that date, not exceeding 12 months, during which it is to have effect, and the authority must comply with it³⁵. If the authority fails to comply with this obligation, it is guilty of an offence³⁶.

Forthwith after approving a charge or giving a direction on any occasion³⁷, the Secretary of State must publish in the newspapers in which notice of the lodging of the objection³⁸ was published the notice or direction given by him to the harbour authority concerned³⁹.

The provisions mentioned above apply in relation to ship, passenger and goods dues imposed by a harbour authority at a fishery harbour⁴⁰ which in the exercise and performance of statutory powers and duties it is engaged in improving, maintaining or managing⁴¹. An order declaring that a harbour has become or ceased to be a fishery harbour⁴² may make such provision with respect to proceedings under the Harbours Act 1964 relating to charges at the harbour which are uncompleted when the order is made as the Secretary of State thinks requisite in view of the change of status of the harbour⁴³.

1 For the meanings of 'written' and 'writing' see PARA 605 note 3 ante.

2 The ship passenger and goods dues other than combined charges within the meaning of the Harbours Act 1964 s 27A (as added) (see PARA 668 ante): s 31(1) (amended by the Transport Act 1981 s 18(1), Sch 6 para 8(3)). For the meaning of 'ship, passenger and goods dues' see PARA 628 note 28 ante. The Harbours Act 1964 s 31 (as amended) is expressed to be subject to the provisions of the Act following s 31(1) (as amended): s 31(1) (as so amended). Of these provisions, the only one still in force is s 36 (as amended), which provides that s 31 (as amended) does not apply to charges: (1) imposed by the British Waterways Board at a harbour not specified in the Transport Act 1962 s 50(1), Sch 9 (as amended); (2) imposed at a harbour owned or managed by a person carrying on an inland waterway undertaking to which s 43 applies by virtue of s 52(2); or (3) imposed at a harbour owned or managed by a person carrying on an undertaking all or any of the charges of which are, under the statutory provisions relating to the undertaking, subject to revision by the Secretary of State and some other minister acting together: Harbours Act 1964 s 36 (amended by the Transport Act 1968 s 156(2), Sch 16 para 8(1); the Transport Act 1981 s 40(1), Sch 12 Pts I, II; and the Transport Act 2000 s 274, Sch 31 Pt IV). For the meaning of 'charges' see PARA 628 note 35 ante. As to the British Waterways Board see WATER AND WATERWAYS vol 101 (2009) PARA 725 et seq. For the meaning of 'person' see PARA 605 note 4 ante. For the meaning of 'harbour' see PARA 611 ante. For the meaning of 'statutory provision' see PARA 628 note 9 ante. As to the Secretary of State see PARA 603 ante. The Harbours Act 1964 s 36 (as amended) refers to the 'minister', who is defined as the Minister of Transport (s 57(1)); as to this minister and the transfer of his functions to the Secretary of State see PARA 603 ante.

3 For the meaning of 'harbour authority' see PARA 619 ante.

4 As to references to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties see PARA 605 note 5 ante.

5 Harbours Act 1964 s 31(2) (amended by the Transport Act 1981 ss 15, 40(1), Sch 5 para 10(2), Sch 12 Part II).

6 Harbours Act 1964 s 31(2)(a).

7 Ibid s 31(2)(b). Section 31(2) (as amended) is expressed to be subject to s 31(10)-(12) (as amended): see notes 27, 31, 34 infra.

8 Ibid s 31(2)(i).

9 Ibid s 31(2)(ii). References in s 31 (as amended) to the rate at which a charge is imposed are references to the amount where no composition agreement applies and no specially agreed rebate is allowed: s 31(1) (as amended: see note 2 supra).

10 For the meaning of 'ship' see PARA 611 note 2 ante.

11 For the meaning of 'goods' see PARA 611 note 5 ante.

12 Harbours Act 1964 s 31(2)(iii).

13 Ibid s 31(2)(iv).

14 As to the service of documents see PARA 761 post.

15 If a form of notice is specified, the notice must be in that form: Harbours Act 1964 s 31(3).

16 Ibid s 31(3) (amended by the Transport Act 1981 Sch 5 para 10(2)).

17 Harbours Act 1964 s 31(3)(a).

18 As to the reckoning of periods see PARA 634 note 8 ante.

19 Harbours Act 1964 s 31(3)(b) (amended by the Transport Act 1981 Sch 5 para 10(2)).

20 This duty is expressed to be subject to the Harbours Act 1964 s 31(5) (as amended): see the text and notes 25-26 infra.

21 Ie such person or body as is mentioned in ibid s 31(3)(b) (as amended): see head (b) in the text.

22 Ibid s 31(4) (amended by the Transport Act 1981 Sch 5 para 10(2)).

23 As to inquiries see PARA 760 post.

24 Harbours Act 1964 s 31(4) (as amended: see note 22 supra).

25 Ie made as mentioned in ibid s 31(4) (as amended): see the text to notes 20-22 supra.

26 Ibid s 31(5) (amended by the Transport Act 1981 Sch 5 para 10(2)).

27 Harbours Act 1964 s 31(5) (as amended: see note 26 supra). Where effect to s 31(3)-(5) (as amended) is in course of being given in consequence of the lodging with the Secretary of State of an objection to a charge and a further objection to that charge is lodged with the Secretary of State, the provisions of s 31(3)-(6) (as amended) do not have effect by virtue of the lodging of the further objections: s 31(11) (amended by the Transport Act 1981 Sch 5 para 10(2)).

28 Ie after effect has been given to the Harbours Act 1964 s 31(4) (as amended): see the text to notes 20-24 supra.

29 See ibid s 31(6) (amended by the Transport Act 1981 Sch 5 para 10(2)).

30 'Month' means calendar month: Interpretation Act 1978 s 5, Sch 1.

31 See the Harbours Act 1964 s 31(6)(a) (as amended: see note 29 supra). Where by virtue of s 31 (as amended) a charge imposed at a harbour is approved, the provisions of s 31(3)-(6) (as amended) do not have effect by virtue of the lodging of a further objection to it during the period during which the approval is of effect: s 31(10).

32 Ie on any of the grounds prescribed in ibid s 31(2) (as amended).

33 Ie the objection the lodging of which gives rise to the proceedings: see ibid s 31(6)(b).

34 Ibid s 31(6)(b). Where by virtue of s 31 (as amended) a direction is given with respect to a charge imposed at a harbour, the provisions of s 31(3)-(6) (as amended) do not have effect by virtue of the lodging of a further objection to the charge during the period during which the direction has effect or the lodging, during that period, of an objection to a charge that has come into existence by virtue of that direction: s 31(10). If it

appears to the Secretary of State that the Sea Fish Industry Authority is or may be concerned with a charge, the Secretary of State must not give effect to s 31(6) (as amended) in relation to that charge without having consulted the authority: s 31(12) (amended by the Fisheries Act 1981 s 13(2), Sch 3 para 8(2)). As to the Sea Fish Industry Authority see AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARAS 1054-1065.

35 Harbours Act 1964 s 31(7).

36 Ibid s 31(8). The offence is punishable on summary conviction by a fine not exceeding level 4 on the standard scale: s 31(8) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see PARA 605 note 13 ante. As to offences by corporations under the Harbours Act 1964 see PARA 757 post.

37 Ie forthwith after complying on any occasion with ibid s 31(6) (as amended): see the text to notes 28-34 supra.

38 Ie the objection the lodging of which gave rise to the proceedings that resulted in that compliance: see note 37 supra.

39 Harbours Act 1964 s 31(9) (amended by the Transport Act 1981 Sch 5 para 10(2)).

40 For the meaning of 'fishery harbour' see PARA 612 ante.

41 Harbours Act 1964 s 31(13) (amended by the Transport Act 1981 Sch 5 para 10(2), Sch 12 Pt II). This provision as originally enacted provided for the functions in respect of fishery harbours to be exercised by the Minister of Agriculture, Fisheries and Food; but the functions of this minister are now transferred to the Secretary of State: see the Transfer of Functions (Fishery Harbours) Order 2001, SI 2001/3503, art 2(1)(b); and PARA 603 ante. As to the transfer to the Welsh Ministers of functions under the Harbours Act 1964 in relation to fishery harbours in Wales see PARA 604 ante.

The provisions of the Harbours Act 1964 s 31 (as amended) are applied, with modifications, to local light dues levied by a local lighthouse authority which is not a harbour authority: see the Merchant Shipping Act 1995 s 210(8), Sch 10. Section 210(8) also applies in relation to any charge imposed by a harbour authority in its capacity as a local lighthouse authority, which is not a ship, passenger or goods due: Docks and Harbours Act 1966 s 46(3); Interpretation Act 1978 s 17(2). As to the cases in which a charge imposed by such an authority may not be such a due see PARA 666 ante. For the meaning of 'local lighthouse authority' see PARA 611 note 1 ante.

42 Ie an order under the Sea Fish Industry Act 1951 s 21(8) (as amended): see PARA 612 ante.

43 See the Harbours Act 1964 s 39(4) (amended by the Transfer of Functions (Fishery Harbours) Order 2001, SI 2001/3503, art 5, Schedule para 2).

UPDATE

670-671 Duty of harbour authorities to keep lists of charges, Right of objection to ship, passenger and goods dues

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

671-673 Right of objection to ship, passenger and goods dues ... Ascertainment of charges

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

672. Exemptions from charges.

There is a statutory exemption¹ from rates² for any vessel³ belonging to or in the service of Her Majesty⁴, or any member of the royal family, or in the service of the Commissioners for Revenue and Customs⁵, the Corporation of Trinity House of Deptford Strond⁶ or the Commissioners of Northern Lighthouses⁷, which uses the harbour, dock or pier⁸ and is not conveying goods for hire⁹. The exemption extends to any of the officers or persons employed in the service of the Admiralty¹⁰, the Royal Air Force¹¹, the Secretary of State for Defence¹² and the Commissioners for Revenue and Customs or their baggage, any naval, victualling or ordnance stores or other stores or goods for the service of Her Majesty or which are Her property, or any troops landed upon or delivered or disembarked from any quays of the harbour, dock or pier or their baggage¹³. Any vessel or goods under seizure by officers of Revenue and Customs are also exempted¹⁴. All such vessels, officers and persons are entitled to have the free use of the harbour, dock or pier, without any charge or rate being made for its use¹⁵. Any person claiming and taking the benefit of any such exemption without being entitled to it is guilty of an offence¹⁶.

If any vessel for which the rates have been paid is obliged, from stress of weather or other sufficient cause, to return with the same cargo after leaving the harbour, dock or pier, the rates are not payable again in respect of the vessel¹⁷.

Vessels of countries with which treaties of reciprocity exist are to be charged as British ships¹⁸.

1 As to the necessity for incorporation of Harbours, Docks and Piers Clauses Act 1847 in local legislation see PARA 602 ante.

2 For the meaning of 'rate' see PARA 616 note 4 ante.

3 'Vessel' includes, unless there is something repugnant in the subject or context, a ship, boat, lighter and craft of every kind and whether navigated by steam or otherwise: Harbours, Docks and Piers Clauses Act 1847 s 3. A dumb barge is not a vessel in this context: *Hedges v London and St Katherine Docks Co* (1885) 16 QBD 597 at 600-601. For the purposes of the Harbours, Docks and Piers Clauses Act 1847 s 28 (as amended) (and for the purposes of ss 52, 53: see PARA 690 post), references in whatever terms to ships, vessels or boats or activities or places connected with them are extended to include hovercraft or activities or places connected with hovercraft: see the Hovercraft Act 1968 s 1 (as amended); the Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 4, Sch 1 Pt A; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 382. For the meaning of 'hovercraft' see PARA 611 note 2 ante. 'Vessel' in the Harbours, Docks and Piers Clauses Act 1847 s 28 (as amended) is deemed to include any aircraft on the surface of the water, being an aircraft which is designed to float or manoeuvre on water: Civil Aviation Act 1982 s 97(3).

4 As to Her Majesty's vessels see ARMED FORCES.

5 As to the Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

6 As to Trinity House of Deptford Strond see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1069.

7 As to the Commissioners of Northern Lighthouses see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1070.

8 For the meaning of 'the harbour, dock or pier' see PARA 663 note 3 ante.

9 Harbours, Docks and Piers Clauses Act 1847 s 28 (amended by the Post Office Act 1969 s 141, Sch 11 Pt II; and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). For the meaning of 'goods' see PARA 663 note 2 ante.

10 As to the Admiralty and its absorption into the Ministry of Defence see ARMED FORCES.

11 The statutory exemption from rates was applied to the Royal Air Force by the Air Force (Application of Enactments) (No 2) Order 1918, SR & O 1918/548. As to the Royal Air Force see ARMED FORCES.

12 This provision, as enacted, refers to 'the Ordnance'. As to the devolution of the functions of the Ordnance to the Secretary of State for Defence see the Ministry of Supply Act 1939 s 2(3), Schedule Pt II. As to the Secretary of State for Defence see ARMED FORCES vol 2(2) (Reissue) PARA 2; CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 439.

13 See the Harbours, Docks and Piers Clauses Act 1847 s 28 (as amended: see note 9 supra). Stone for government works has been held to be exempt under this provision: *Weymouth Corpn v Nugent* (1865) 6 B & S 22.

14 Harbours, Docks and Piers Clauses Act 1847 s 28 (as amended: see note 9 supra).

15 Ibid s 28 (as amended: see note 9 supra). Similar exemptions are contained in local Acts and orders of individual harbour authorities: see eg the Port of London Act 1968 s 28.

16 Harbours, Docks and Piers Clauses Act 1847 s 28 (as amended: see note 9 supra). The offence is punishable on summary conviction by a fine not exceeding level 3 on the standard scale: see s 28 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 605 note 13 ante.

17 Harbours, Docks and Piers Clauses Act 1847 s 29. Provisions which expressly provide for freedom from dues are excepted from the general repeal of provisions limiting the discretion of harbour authorities as to harbour charges: see PARA 666 ante.

18 See ibid s 31. As to ships which are deemed to be British ships see the Merchant Shipping Act 1995 s 1; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 230.

UPDATE

671-673 Right of objection to ship, passenger and goods dues ... Ascertainment of charges

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/7. HARBOUR CHARGES/(2) ASCERTAINMENT AND RECOVERY OF CHARGES/673. Ascertainment of charges.

(2) ASCERTAINMENT AND RECOVERY OF CHARGES

673. Ascertainment of charges.

The tonnage rate payable on British registered vessels¹ is ascertained according to the certified tonnage in the register of such vessels². The tonnage of all other vessels is ascertained according to the rules for measuring the tonnage and burden of the merchant shipping³ of the United Kingdom⁴. There are various duties as to reporting and delivering accounts which enable the rates on vessels and cargoes to be ascertained⁵. In addition, the collector of rates⁶ may, either alone or with any other persons, enter any vessel within the limits of the harbour, dock or pier⁷ in order to ascertain the rates payable in respect of the vessel, or of any goods⁸ in it⁹. If any difference arises between the collector of rates and the master¹⁰ of any vessel or the owner¹¹ of any goods as to the weight or quantities of the goods in respect of which any rates are payable, the collector may order all the goods to be weighed or measured and, if necessary, may detain the vessel containing the goods until they have been weighed or measured¹².

1 For the meaning of 'vessel' see PARA 672 note 3 ante. As to the registration of British ships and as to certificates of registry see the Merchant Shipping Act 1995 ss 8-23; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 245 et seq.

2 See the Harbours, Docks and Piers Clauses Act 1847 s 27. The provisions of this Act only apply where they are incorporated in local legislation: see PARA 602 ante. With regard to the application of the Act to the legislation governing the British Waterways Board (see WATER AND WATERWAYS vol 101 (2009) PARA 725 et seq), the provisions of ss 27-29, 31-46, 48 (s 28 as amended) (see the text and notes 4-12 infra; and PARAS 672 ante, 674-676 post) as incorporated with or applied by any enactment relating to any of the harbours specified in the Transport Act 1962 s 50(1), Sch 9 (as amended), and the provisions of any similar enactment, are applied to the charges authorised under the Transport Act 1962 as if they were rates payable under any such enactment: Sch 9 para 6(2) (amended by the Harbours Act 1964 s 39(3)). Ship dues and similar charges are not necessarily based on a vessel's tonnage; this is at the discretion of the harbour authority.

3 As to the ascertainment and registration of the tonnage of British ships see the Merchant Shipping Act 1995 ss 11, 19, and regulations made thereunder; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 248. In the case of ships of certain foreign countries, the tonnage appearing in their registers or other national papers must be accepted by the harbour authority as prima facie evidence of their tonnage: see the Merchant Shipping Act 1995 s 12; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 250.

4 See the Harbours, Docks and Piers Clauses Act 1847 s 27. For the meaning of 'the United Kingdom' see PARA 613 note 1 ante.

5 See PARA 675 post.

6 'Collector of rates' means, unless there is something repugnant in the subject or context, the person appointed by the harbour authority to collect the rates authorised by the special Act to be levied by it, and includes the assistants of such collector: Harbours, Docks and Piers Clauses Act 1847 s 3. This provision, as enacted, refers to 'the undertakers'. For the meaning of 'the undertakers' see PARA 602 note 2 ante. In practice, the undertakers will always be a harbour authority within the meaning of the Harbours Act 1964: see PARA 619 ante. For the meaning of 'rate' see PARA 616 note 4 ante. For the meaning of 'the special Act' see PARA 602 note 2 ante.

7 For the meaning of 'the harbour, dock or pier' see PARA 663 note 3 ante.

8 For the meaning of 'goods' see PARA 663 note 2 ante.

9 Harbours, Docks and Piers Clauses Act 1847 s 34.

10 'Master', unless there is something repugnant in the subject or context, when used in relation to any vessel, means the person having the command or charge of the vessel for the time being: *ibid* s 3.

11 'Owner', unless there is something repugnant in the subject or context, in relation to goods, includes any consignor, consignee, shipper or agent for sale or custody of the goods, as well as their owner: *ibid* s 3. A vendor of coal who has contracted to deliver it on board a ship to be provided by the purchaser is not an owner: *Ribble Navigation Co v Hargreaves* (1856) 17 CB 385.

12 Harbours, Docks and Piers Clauses Act 1847 s 40. If goods weigh more than the amount stated, the weighing expenses must be paid to the harbour authority, and if the goods weigh the same or less than stated, the harbour authority must pay any expenses of weighing or detention: see s 41. This provision, as enacted, refers to 'the undertakers': see note 6 supra. As to the appointment of meters and weighers see PARA 677 post. As to weights and measures generally see WEIGHTS AND MEASURES.

UPDATE

671-673 Right of objection to ship, passenger and goods dues ... Ascertainment of charges

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/7. HARBOUR CHARGES/(2) ASCERTAINMENT AND RECOVERY OF CHARGES/674. Power to compound for charges.

674. Power to compound for charges.

A harbour authority¹ may from time to time agree with the proprietors or masters² engaged in transporting passengers, or with any other persons using the harbour, dock or pier³, either for purposes of business or pleasure, for the payment in advance of a fixed sum as a composition, by the year or other shorter period, for the rates⁴ payable by or in respect of those passengers or their luggage or by such other persons⁵.

1 This provision, as enacted, refers to 'the undertakers'. For the meaning of 'the undertakers' see PARA 602 note 2 ante. In practice, the undertakers will always be a harbour authority within the meaning of the Harbours Act 1964: see PARA 619 ante.

2 For the meaning of 'master' see PARA 673 note 10 ante.

3 For the meaning of 'the harbour, dock or pier' see PARA 663 note 3 ante.

4 For the meaning of 'rate' see PARA 616 note 4 ante.

5 See the Harbours, Docks and Piers Clauses Act 1847 s 32. This provision is subject to a proviso, now of doubtful effect in view of the Harbours Act 1964 s 38(1)(c) (see PARA 666 ante), prohibiting composition of rates partially in favour of any particular person: see the Harbours, Docks and Piers Clauses Act 1847 s 32. The provisions of the Harbours, Docks and Piers Clauses Act 1847 only apply where they are incorporated in local legislation: see PARA 602 ante.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/7. HARBOUR CHARGES/(2) ASCERTAINMENT AND RECOVERY OF CHARGES/675. Duties of masters and shippers.

675. Duties of masters and shippers.

Within 24 hours after the arrival within the limits of the harbour, dock or pier¹ of any vessel² liable to rates³, the master⁴ of the vessel must report the arrival to the harbour master⁵, and if he fails to do so, he is liable to a penalty⁶. The master of every registered vessel⁷ must, on demand, produce the certificate of registry of the vessel to the collector of rates⁸, and if he refuses or neglects to do so he is liable to a penalty⁹.

When any goods¹⁰ are intended to be unshipped within the limits of the harbour, dock or pier, the master of the vessel containing the goods must, within 12 hours after the arrival of the vessel within the limits of the harbour, dock or pier, deliver to the collector of rates the name of the consignee of the goods, or any other person to whom they are to be delivered¹¹. If the whole cargo is intended to be unshipped, the master must deliver to the collector of rates a copy of the bill of lading or manifest of the cargo¹². If part only of the cargo is intended to be unshipped, the master must deliver the best account in writing¹³ in his power of the kinds, weights and quantities of the goods intended to be unshipped¹⁴. The master must also, if required to do so by the collector of rates, give him 12 hours' notice of the time at which the cargo of the vessel, or any part of it, is intended to be unshipped¹⁵. A master who fails to deliver or give any of the required particulars of cargo or notice of unshipment¹⁶, or who delivers or gives any false particulars or notice, is guilty of an offence¹⁷.

Before any person ships any goods on board any vessel within the limits of the harbour, dock or pier, he must give to the collector of rates a true account, signed by him, of the kinds,

quantities and weights of the goods¹⁸. Every person who ships any goods in any such vessel without having given such accounts, or who gives or signs a false account of the goods, is guilty of an offence¹⁹.

1 For the meaning of 'the harbour, dock or pier' see PARA 663 note 3 ante.

2 For the meaning of 'vessel' see PARA 672 note 3 ante.

3 For the meaning of 'rate' see PARA 616 note 4 ante.

4 For the meaning of 'master' see PARA 673 note 10 ante.

5 Harbours, Docks and Piers Clauses Act 1847 s 35. As to harbour masters see PARA 690 et seq post. The provisions of the Harbours, Docks and Piers Clauses Act 1847 only apply where they are incorporated in local legislation: see PARA 602 ante. The Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37 (as amended) require notice to be given before dangerous substances are brought into a harbour or harbour area: see PARA 700 et seq post.

6 Harbours, Docks and Piers Clauses Act 1847 s 35. The offence is punishable by a penalty not exceeding level 1 on the standard scale: s 35 (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). In the case of harbours of Associated British Ports the maximum penalty is level 3 on the standard scale: see the British Transport Docks Act 1981 ss 17, 20, Sch 1 (amended by virtue of the Criminal Justice Act 1982 s 46). As to Associated British Ports see PARA 622 ante. As to the standard scale see PARA 605 note 13 ante.

7 As to the registration of British ships, and as to certificates of registry, see the Merchant Shipping Act 1995 ss 8-23; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 245 et seq.

8 Harbours, Docks and Piers Clauses Act 1847 s 36. For the meaning of 'collector of rates' see PARA 673 note 6 ante.

9 Ibid s 36. The offence is punishable by a penalty not exceeding level 2 on the standard scale: s 36 (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). In the case of harbours of Associated British Ports, the maximum penalty is level 3 on the standard scale: see the British Transport Docks Act 1981 ss 17, 20, Sch 1 (as amended: see note 6 supra).

10 For the meaning of 'goods' see PARA 663 note 2 ante.

11 Harbours, Docks and Piers Clauses Act 1847 s 37. As to the weighing or measuring of goods in case of dispute see s 40; and PARA 673 ante.

12 Ibid s 37. As to bills of lading see CARRIAGE AND CARRIERS vol 7 (2008) PARA 313 et seq.

13 For the meaning of 'writing' see PARA 605 note 3 ante.

14 Harbours, Docks and Piers Clauses Act 1847 s 37.

15 Ibid s 37.

16 Ie the particulars and notice required by ibid s 37: see the text to notes 10-15 supra.

17 Ibid s 38. The offence is punishable on summary conviction by a penalty not exceeding level 2 on the standard scale: s 38 (amended by virtue of the Criminal Justice Act 1984 ss 37, 46). In the case of harbours of Associated British Ports, the maximum penalty is level 3 on the standard scale: British Transport Docks Act 1981 ss 17, 20, Sch 1 (as amended: see note 6 supra).

18 Harbours, Docks and Piers Clauses Act 1847 s 39. As to the duty to discharge the cargo see PARA 695 post.

19 Ibid s 39. The offence is punishable on summary conviction by a penalty not exceeding level 2 on the standard scale: s 39 (amended by virtue of the Criminal Justice Act 1982 ss 37, 48). In the case of harbours of Associated British Ports, the maximum penalty is level 3 on the standard scale: see the British Transport Docks Act 1981 ss 17, 20, Sch 1 (as amended: see note 6 supra).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/7. HARBOUR CHARGES/(2) ASCERTAINMENT AND RECOVERY OF CHARGES/676. Recovery of charges.

676. Recovery of charges.

The rates¹ payable to the harbour authority² in respect of any goods³ to be shipped within the limits of the harbour, dock or pier⁴ must be paid before shipment⁵. In the case of goods to be unshipped, the rates must be paid before the removal of the goods from the authority's premises, and before the expiry of two months after unshipment⁶.

If the master⁷ of any vessel⁸ or the owner⁹ of any goods evades the payment of the rates payable to the harbour authority in respect of the vessel or goods, or any part of them, he must pay to the authority three times the amount of the rates evaded¹⁰. If the master of any vessel, in respect of which any rate is payable to the authority, refuses or neglects to pay it, or any part of it, the collector of rates¹¹ may, with such assistance as he considers necessary, go on board the vessel and demand the rates¹². On non-payment of the rates, or any part of them, he may of his own authority take, distrain or arrest the vessel and its tackle, apparel and furniture, and detain the items distrained or arrested until the rates are paid¹³. If any of the rates remain unpaid for seven days after any distress or arrest, the collector of rates may order the appraisal of these items, by two or more sworn appraisers, and then order any of them to be sold¹⁴. With the proceeds of sale he may satisfy the unpaid rates and the expenses¹⁵ and must remit the surplus, if any, to the master of the vessel on demand¹⁶.

If default is made in the payment of the rates payable in respect of goods, the collector of rates may of his own authority distrain or arrest the goods, and may enter, for that purpose, any vessel within the limits of the harbour, dock or pier with such assistance as he considers necessary¹⁷. Alternatively, if the goods have been removed without payment of the rates, he may distrain or arrest any other goods within the limits of the harbour, dock or pier, or the premises of the harbour authority, belonging to the person liable to pay those rates, and may sell the goods and pay the rates due to the authority out of the proceeds, rendering the surplus, if any, to the owner of the goods on demand¹⁸. If any dispute arises concerning the amount of rates due, or charges occasioned by any distress or arrest, by virtue of the Harbours, Docks and Piers Clauses Act 1847 or the special Act¹⁹, the person making the distress or arrest may detain the distrained or arrested goods until the amount of the rates due or of the charges are ascertained by a justice²⁰. The justice must determine the matter on application to him and award such costs as he thinks reasonable; if the costs are not paid on demand, they must be levied by distress and sale, and the justice must issue his warrant accordingly²¹.

An officer of Revenue and Customs²² for the district²³ may, with the consent of the Commissioners for Revenue and Customs, refuse to receive any entry or give any certificate²⁴, discharge or clearance or to take any report inwards or outwards of any vessel liable to the payment of the rates imposed by the special Act, until the master of the vessel produces to the officer a certificate that the rates payable in respect of the vessel and any goods imported or exported by the vessel have been paid²⁵. Alternatively, the refusal by the officer may continue, if there is any dispute as to the rates payable, until the officer is satisfied that sufficient security has been given for the payment of the rates when ascertained, together with the expenses arising from their non-payment²⁶.

1 For the meaning of 'rate' see PARA 616 note 4 ante.

2 These provisions, as enacted, refer to 'the undertakers'. For the meaning of 'the undertakers' see PARA 602 note 2 ante. In practice, the undertakers will always be a harbour authority within the meaning of the Harbours Act 1964: see PARA 619 ante.

3 For the meaning of 'goods' see PARA 663 note 2 ante.

4 For the meaning of 'the harbour, dock or pier' see PARA 663 note 3 ante.

5 Harbours, Docks and Piers Clauses Act 1847 s 42. The provisions of the Harbours, Docks and Piers Clauses Act 1847 only apply where they are incorporated in local legislation: see PARA 602 ante. The provisions of the Act are usually replaced by specific provisions in modern harbour legislation. As to the duty of shippers to give an account of goods to be shipped see the Harbours, Docks and Piers Clauses Act 1847 s 39; and PARA 675 ante.

6 Ibid s 42. As to the duties of masters of vessels in respect of goods to be unshipped see PARA 675 ante.

7 For the meaning of 'master' see PARA 673 note 10 ante.

8 For the meaning of 'vessel' see PARA 672 note 3 ante. The penalty for the evasion of charges under the Harbours, Docks and Piers Clauses Act 1847 s 43 and the power to distrain under s 44 (see the text to notes 11-16 infra) (where those provisions are incorporated in the relevant local legislation) apply in respect of charges imposed under the Harbours Act 1964 s 26: see s 26(3); and PARA 666 ante. The definition of 'ship' in s 57(1) ('every description of vessel used in navigation') (see PARA 611 note 2 ante) is therefore applicable. A vessel which is not currently used for navigation may be a vessel used in navigation for the purpose of s 57(1): *R v Carrick District Council, ex p Pranker* [1999] QB 1119, [1999] 2 WLR 489.

9 For the meaning of 'owner' see PARA 673 note 11 ante.

10 Harbours, Docks and Piers Clauses Act 1847 s 43. The amount payable under this provision is recoverable from the master or owner guilty of the evasion in the same manner as a penalty (see PARA 758 post) or by action in any court of competent jurisdiction: s 43.

11 For the meaning of 'collector of rates' see PARA 673 note 6 ante.

12 Harbours, Docks and Piers Clauses Act 1847 s 44. The charges to which this provision relates (generally, now, dues levied under the Harbours Act 1964 s 26 (see PARA 666 ante) are not limited by the reference to 'tonnage rates' in the marginal note to the provision, and include charges on private yachts as well as commercial vessels: *R v Carrick District Council, ex p Pranker* [1999] QB 1119, [1999] 2 WLR 489.

13 Harbours, Docks and Piers Clauses Act 1847 s 44. A harbour authority may exercise a statutory right to detain a vessel until rates are paid, notwithstanding the prior existence of a maritime lien in favour of the master and crew: *The Emilie Millon* [1905] 2 KB 817, CA. The harbour authority cannot claim priority for its rates if it abandons its right to detain, eg by beginning legal proceedings for their recovery: *The Charger* [1966] 3 All ER 117, [1968] 1 WLR 1707. See also *The Queen of the South* [1968] 1 All ER 1163, [1968] P 449; *The Freightline One* [1986] 1 Lloyd's Rep 266, HL. A harbour authority's local legislation nearly always provides that, in addition to any other remedy under that legislation, including incorporated provisions of the Harbours, Docks and Piers Clauses Act 1847, the authority may recover any charges payable to it in any court of competent jurisdiction.

14 Ibid s 44. If a vessel in respect of which a harbour authority exercises its statutory power of sale is subject to a mortgage, the sale is free from that incumbrance: *The Blitz* [1992] 2 Lloyd's Rep 441.

15 Ie the expenses of taking, keeping, appraising and selling the matters distrained or arrested: see the Harbours, Docks and Piers Clauses Act 1847 s 44.

16 Ibid s 44.

17 Ibid s 45.

18 Ibid s 45. Before making any such distress or arrest, the collector of rates must pay all duties payable to Her Majesty on the distrained or arrested goods and may retain out of the proceeds of the sale of the goods the amount of duties so paid: s 45.

19 For the meaning of 'the special Act' see PARA 602 note 2 ante.

20 Harbours, Docks and Piers Clauses Act 1847 s 46.

21 Ibid s 46.

22 As to Her Majesty's Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

23 Ie the district within which the harbour, dock or pier is situated: see the Harbours, Docks and Piers Clauses Act 1847 s 48.

- 24 The Harbours, Docks and Piers Clauses Act 1847 uses the now obsolete term 'cocquet'.
- 25 Ibid s 48 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50).
- 26 Harbours, Docks and Piers Clauses Act 1847 s 48.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/7. HARBOUR CHARGES/(2) ASCERTAINMENT AND RECOVERY OF CHARGES/677. Appointment of meters and weighers.

677. Appointment of meters and weighers.

Where under the special Act¹ the harbour authority² is authorised to appoint meters and weighers³, it may appoint and license a sufficient number of persons to be meters and weighers within the limits of the harbour, dock and pier⁴. The authority may remove them at its pleasure, make regulations for their administration, and fix reasonable rates or other remuneration to be paid to them for weighing and measuring goods⁵. When a sufficient number of meters and weighers have been duly appointed⁶ by the authority, the master⁷ of any vessel⁸, or the owner⁹ of any goods¹⁰ shipped, unshipped or delivered within or upon the harbour, dock or pier, may not employ any person to weigh or measure the goods except a weigher or meter licensed by the authority or appointed by the Commissioners for Revenue and Customs¹¹. In such a case, if any person other than a duly licensed or appointed meter or weigher measures any such goods, both he and his employer are guilty of an offence and the weighing or measurement is illegal¹².

1 For the meaning of the 'special Act' see PARA 602 note 2 ante.

2 These provisions, as enacted, refer to 'the undertakers'. For the meaning of 'the undertakers' see PARA 602 note 2 ante. In practice, the undertakers will always be a harbour authority within the meaning of the Harbours Act 1964: see PARA 619 ante.

3 As to the general power of harbour authorities to appoint officers see PARA 740 post. As to the weighing and measuring of goods see PARA 673 ante.

4 Harbours, Docks and Piers Clauses Act 1847 s 81. For the meaning of 'the harbour, dock or pier' see PARA 663 note 3 ante. The provisions of the Harbours, Docks and Piers Clauses Act 1847 only apply where they are incorporated in local legislation: see PARA 602 ante. The authority has no exclusive right to provide weighing machines: *Port of London Authority v Cairn Line of Steamships Ltd* [1913] 1 KB 497.

5 Harbours, Docks and Piers Clauses Act 1847 s 81.

6 Ie under the powers of the Harbours, Docks and Piers Clauses Act 1847 and the special Act: see s 82.

7 For the meaning of 'master' see PARA 673 note 10 ante.

8 For the meaning of 'vessel' see PARA 672 note 3 ante.

9 For the meaning of 'owner' see PARA 673 note 11 ante.

10 For the meaning of 'goods' see PARA 663 note 2 ante.

11 Harbours, Docks and Piers Clauses Act 1847 s 82 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). As to the Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq. The harbour authority may exempt persons from the obligation to employ meters and weighers: *Whiting v Carpenter* (1871) 24 LT 576. Where under a charterparty goods are to be taken from alongside at the charterer's expense, and the goods have to be measured, the ship owner is liable for the expense if the metage takes place on board and the charterer is liable if the metage is performed ashore:

Woodham v Peterson (1871) 1 Asp MLC 93. As to charterparties see CARRIAGE AND CARRIERS vol 7 (2008) PARA 207 et seq.

12 Harbours, Docks and Piers Clauses Act 1847 s 82. The offence is punishable by a penalty not exceeding level 1 on the standard scale: s 82 (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see PARA 605 note 13 ante. As to the recovery of penalties see PARA 758 post.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/7. HARBOUR CHARGES/(3) ANCIENT RIGHT TO TAKE TOLLS AND DUES/678. Tolls and dues at common law.

(3) ANCIENT RIGHT TO TAKE TOLLS AND DUES

678. Tolls and dues at common law.

As an incident to a port there may be a right to take tolls and dues for the use of it, such as anchorage and tonnage dues¹. These dues may arise from the ownership of the soil of the port, or may be a consequence of the franchise independently of the ownership of the soil. The right to take dues in respect of a port may arise by Act of Parliament, grant or immemorial usage². Wherever the Crown has established a port with a suitable landing place, whether the port be naturally or artificially formed, a sufficient consideration for the port dues arises³.

Where the toll is claimed in respect of a harbour or other locality which is not a port, some consideration for the toll must be shown, unless it was imposed by Parliament, for a toll is a mode of paying for a public service, and must be for the public advantage and reasonable in amount⁴. The Crown cannot create a toll which affects the public right of navigation without some additional consideration, but it is not necessary for the benefit conferred by the owner of the toll to be precisely that in respect of which the toll is demanded⁵.

These powers of the Crown only relate to franchise ports and are consequently of little, if any, practical significance today⁶.

1 Anchorage is a toll for every anchor cast in the port: Hale, de Portibus Maris, c 6; *Gann v Free Fishers of Whitstable* (1865) 11 HL Cas 192. If an anchorage due is claimed in respect of the soil and not of a franchise port, it must be shown that the soil was originally in the precincts of a port, or that some service or aid to navigation was rendered by the owner of the soil; and the establishment of an oyster fishery, though it may be a public benefit, is wholly unconnected with the right of navigation and cannot be the foundation for such a due: *Gann v Free Fishers of Whitstable* supra; *Foreman v Free Fishers and Dredgers of Whitstable* (1869) LR 4 HL 266. For various instances of dues that may be claimed, either in respect of the franchise or of the soil, such as ballastage, busselage, keelage, petty customs, lestage, prisage, towage, moreage, terrage, cranage, wharfage, housellage, tronage, pesage, and measurage, see Hale, de Portibus Maris, c 6. The origin of these, except ballastage, which arises from ownership of the soil, is either grant, custom, or prescription: c 6.

2 *Kingston-upon-Hull Dock Co v La Marche* (1828) 8 B & C 42; *Foreman v Free Fishers and Dredgers of Whitstable* (1869) LR 4 HL 266; *Exeter Corpn v Warren* (1844) 5 QB 773.

3 *Foreman v Free Fishers and Dredgers of Whitstable* (1869) LR 4 HL 266 at 281; *Exeter Corpn v Warren* (1844) 5 QB 773; *Yarmouth Corpn v Eaton* (1763) 3 Burr 1402; *Vinkensterne v Ebden* (1698) 1 Ld Raym 384.

4 *Lord Falmouth v George* (1828) 5 Bing 286 (toll on all fishing boats frequenting Sennen Cove for use of the capstan); *Vinkensterne v Ebden* (1698) 1 Ld Raym 384; *Haspurt v Wills* (1670) 1 Mod Rep 47; *Warren v Prideaux* (1673) 1 Mod Rep 105.

5 *Foreman v Free Fishers and Dredgers of Whitstable* (1869) LR 4 HL 266 at 285; *Gann v Free Fishers of Whitstable* (1865) 11 HL Cas 192. As to the public right of navigation see PARA 615 ante.

6 As to franchise ports see PARA 607 ante.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/8. BORROWING, FINANCIAL ASSISTANCE AND ACCOUNTS/679. Borrowing powers of harbour authorities.

8. BORROWING, FINANCIAL ASSISTANCE AND ACCOUNTS

679. Borrowing powers of harbour authorities.

The borrowing powers of a trust port¹ or statutory harbour company², both for capital purposes³ and temporary purposes, are contained in its local legislation. All such borrowing powers (the form of which varied considerably⁴) which were in force immediately before 1 January 1986 were affected by the coming into force of the Ports (Finance) Act 1985⁵. On and after 1 January 1986, if a borrowing power specified a limit to the amount which might be borrowed without any power to borrow further with the consent of a Minister of the Crown, the limit remained the same but applied (if it did not do so already) to the amount of borrowed money outstanding for the time being⁶. If the power was to borrow with the consent of a Minister of the Crown without a specified limit, the requirement to obtain such consent ceased but borrowing became subject to a limit on the amount outstanding from time to time equal to the aggregate of all the sums the borrowing of which had been authorised by the minister before 1 January 1986 increased by 20 per cent⁷. If a power was to borrow with the consent of a Minister of the Crown up to a specified limit, then the requirement to obtain such consent ceased but borrowing became subject to the former limit increased by 20 per cent and applying (if it did not do so already) to the amount of borrowed money outstanding for the time being⁸. Where a relevant harbour authority had power to borrow up to a specified limit without the consent of a Minister of the Crown and to borrow further sums with such consent, the requirement to obtain the minister's consent ceased and the limit on borrowing became the aggregate of the former specified limit increased by 20 per cent and of any additional amounts the borrowing of which had been authorised by the minister before 1 January 1986 also increased by 20 per cent, such limit applying to the amount of borrowed money outstanding for the time being⁹.

Modern powers for trust ports and statutory harbour companies to borrow for capital purposes usually give the harbour authority a wide discretion both as to the method of borrowing and the security on which it may borrow. In older local port legislation the method of borrowing is sometimes expressed to be by the issue of debenture stock.

Where a harbour authority is a company formed under the Companies Act 1985¹⁰ the authority borrows money for harbour purposes under powers contained in its memorandum of association¹¹.

Associated British Ports¹² has power to borrow in such a manner and on such terms as it considers expedient on the security of all or any part of its undertaking, revenues, property or assets¹³. The aggregate amount outstanding at any time of money borrowed by Associated British Ports and its subsidiaries must not exceed the limit for the time being set by Associated British Ports Holding plc¹⁴.

A harbour authority which is a local authority¹⁵ has a general power to borrow for, inter alia, harbour purposes¹⁶. Some such authorities also have a power to borrow for harbour purposes in their local legislation.

The British Waterways Board¹⁷ has power to borrow for capital harbour purposes from the Secretary of State and to borrow temporarily for such purposes from the Secretary of State or from some other person with his consent¹⁸.

Harbour authorities other than the British Waterways Board may borrow from whom they please.

Most harbour loans are now raised on the market, and the powers to lend money described in the following paragraphs¹⁹ have seldom been exercised in recent years.

1 As to trust ports see PARA 621 note 8 ante.

2 As to such companies see PARA 621 ante. The Ports (Finance) Act 1985 refers to any 'relevant harbour authority', which is defined as a harbour authority constituted by or under an existing local provision for the purpose of managing a harbour (within the meaning of the Harbours Act 1964: see PARA 611 ante): Ports (Finance) Act 1985 s 5(1). 'Existing local provision' means a provision of a local Act (including an Act confirming a provisional order) or a provision of an instrument made under any such local Act or of an instrument in the nature of a local enactment made under any other Act, being a provision in force on 1 January 1986: s 5(1); Ports (Finance) Act 1985 (Commencement) Order 1985, SI 1985/1153.

3 This is usually expressed to be purposes to which capital is properly applicable: see eg the Port of London Act 1968 s 48(3)(a). The purposes for which a harbour authority within the meaning of the Harbours Act 1964 (see PARA 619 ante), other than the British Waterways Board and its subsidiaries, may borrow money under any statutory provision include: (1) meeting any expenses properly chargeable to capital being expenses incurred in connection with the provision or improvement of assets in connection with any activity in which the authority has power to engage; (2) acquiring a business or undertaking or part of a business or undertaking in the exercise of powers conferred by the Docks and Harbours Act 1966 s 37 (as amended) (see PARA 744 post) or any other statutory provision; (3) subscribing for or acquiring any securities (within the meaning of s 37: see PARA 744 note 5 post) of a body corporate in the exercise of any such powers: s 39(1).

4 The form of such borrowing powers for capital purposes varied. The most common in the case of trust ports was a power to borrow up to a specified limit and, with the consent of a Minister of the Crown, to borrow such further sums as the trust port might require. In some cases the power was to borrow with the consent of a Minister of the Crown up to a specified limit or, in a few cases, without a specified limit. In others, including most statutory harbour companies, the power was to borrow up to a specified limit without ministerial consent (see eg the Port of London Act 1968 s 48 (as amended); and PARA 625 ante). Temporary borrowing powers were usually subject to a specified limit but seldom required the consent of a Minister of the Crown. Any specified limit on a trust port's or statutory harbour company's borrowing powers was usually expressed to apply to the total amount borrowed but in some cases was expressed to apply to the amount of borrowed money outstanding from time to time.

5 The Ports (Finance) Act 1985 ss 3-5 (as amended) came into force on 1 January 1986: see the Ports (Finance) Act 1985 (Commencement) Order 1985, SI 1985/1153, art 3. So much of any statutory provision of local application as limits the rate of interest at which a harbour authority may borrow money has ceased to have effect: Docks and Harbours Act 1966 s 39(2).

6 Ports (Finance) Act 1985 s 3(4). Where a Minister of the Crown considers it necessary or appropriate to do so in consequence of s 3, he may by order repeal or revoke any existing local provision which in his opinion has ceased to have effect, or make such amendments in any such provision as he thinks fit: s 5(2). Such an order may contain such transitional, supplemental or incidental provisions as he thinks appropriate: s 5(3). The power to make such an order is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 5(4). Such orders being of local effect are not recorded in this work.

7 Ibid s 3(1), (2)(b), (4). See also note 6 supra.

8 Ibid s 3(1), (2)(a), (4). See also note 6 supra.

9 Ibid s 3(1), (3), (4). See also note 6 supra.

10 As to such harbour authorities see PARA 621 ante.

11 As to the borrowing powers of companies see generally COMPANIES. As to memoranda of association see COMPANIES vol 14 (2009) PARA 104.

12 As to Associated British Ports see PARA 622 ante.

13 See the Transport Act 1981 s 8, Sch 3 para 21(1)-(4).

14 Ibid Sch 3 para 21(5).

15 As to such harbour authorities see PARA 621 ante.

16 As to the powers of local authorities to borrow see the Local Government Act 2003 Pt 1 (ss 1-24); and LOCAL GOVERNMENT vol 69 (2009) PARA 594 et seq.

17 As to the British Waterways Board as a harbour authority see PARA 621 ante.

18 See the Transport Act 1962 s 19; and WATER AND WATERWAYS vol 101 (2009) PARA 751. As to the Secretary of State see PARA 603 ante.

19 See PARA 680 et seq post.

UPDATE

679 Borrowing powers of harbour authorities

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/8. BORROWING, FINANCIAL ASSISTANCE AND ACCOUNTS/680. Loans from the Public Works Loan Commissioners.

680. Loans from the Public Works Loan Commissioners.

The Public Works Loan Commissioners¹ may, out of the funds for the time being at their disposal or provided by Parliament for the purpose, advance to any harbour authority², for the purpose of constructing, improving, maintaining, or lighting any public harbour³, or for carrying into effect any other shipping purpose⁴, such sum or sums of money as may be required⁵. However, no such advance may be made for carrying any shipping purpose into effect at a harbour which is not for the time being a fishery harbour⁶ unless the commissioners had agreed to make the advance before 10 June 1964⁷; and no harbour authority may borrow any money from the commissioners without the approval of the Secretary of State⁸.

Subject to the above provisions, any harbour authority which has for the time being power to levy rates and tolls immediately or prospectively, or is or may be entitled to any other income or property applicable to shipping purposes, may borrow money from the commissioners under these provisions on the security of its rates, tolls, income and property or any part of them and charge them accordingly⁹.

The period of repayment for any sums advanced must not exceed 50 years¹⁰. The repayment of any advances and of the interest on them must be secured upon all or any of the rates leviable by the harbour authority to whom the advances are made, either alone or together with such other property or income as may be agreed on¹¹. Certain loans under these provisions have been written off and extinguished by statute¹².

1 As to the Public Works Loan Commissioners see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1377.

2 For the meaning of 'harbour authority' see PARA 619 ante.

3 For the meaning of 'harbour' see PARA 611 ante.

4 'Shipping purposes' includes, unless inconsistent with the context, the constructing or doing any work or thing that conduces to the safety or convenience of ships, or that facilitates the shipping or unshipping of goods, and their management and superintendence, and also includes the maintenance of any lifeboat or other means of preserving life in case of shipwreck: Harbours and Passing Tolls etc Act 1861 s 2.

5 Ibid s 3. The Public Works Loans Act 1875 applies to such loans: see the National Loans Act 1968 s 3(11) (as amended), Sch 4 para 2; and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1385. The purposes for

which harbour authorities may borrow were enlarged by the Docks and Harbours Act 1966 s 39: see PARA 679 note 3 ante. As to the general power of the Public Works Loan Commissioners to lend to local authorities (ie any authority having power to levy a rate upon property) see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1385.

6 For the meaning of 'fishery harbour' see PARA 612 ante.

7 Harbours Act 1964 s 13(2) (amended by the National Loans Act 1968 s 24(2), Sch 6 Pt II). This means, in effect, that advances by the Public Works Loan Commissioners for carrying into effect any shipping purposes at harbours in England and Wales can now only be made in relation to such purposes at fishery harbours.

8 Harbours and Passing Tolls etc Act 1861 s 3(1). This provision, as enacted, referred to the Board of Trade. As to the devolution of harbour functions of the Board to the Secretary of State see PARA 603 ante.

9 Ibid s 3(5). No limitation in the harbour authority's legislation on the amount which may be borrowed affects the amount which may be borrowed under this provision but this does not in general affect the priority of charges or alter provisions which restrict borrowing before a definite portion of capital has been subscribed for: see the Harbours Transfer Act 1862 s 21. There are provisions for incorporating the Commissioners Clauses Act 1847 with respect to mortgages securing loans to public harbour authorities, and for incorporating the Harbours, Docks and Piers Clauses Act 1847 in respect of rates to be charged and as to user by the public, where the proprietor of any private harbour borrows from the Public Works Loan Commissioners: see the Harbours and Passing Tolls etc Act 1861 s 3(6), (7) (amended by the Statute Law Revision Act 1875).

As to the power of the Public Works Loan Commissioners to grant priority to mortgagees other than themselves see the Public Works and Fisheries Acts Amendment Act 1863 ss 1-3. As to the power of harbour authorities to borrow for the purposes of paying off debts having priority over any security for loans by the commissioners and to give the security for the new loan the same priority see s 4.

10 Harbours and Passing Tolls etc Act 1861 s 3(3).

11 Ibid s 3(4). Special provisions apply where a harbour authority which is the proprietor of a harbour is entitled only to a limited estate in the harbour: see s 3(8), (9). Rates of interest for loans under s 3 (as amended) are determined by the Treasury and published in the London Gazette: see the National Loans Act 1968 ss 3, 5, 6, Sch 4 para 2 (all as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 736. As to interest see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1303 et seq.

12 See ibid s 3(10), Sch 3 Pt I (repealed).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/8. BORROWING, FINANCIAL ASSISTANCE AND ACCOUNTS/681. Loans from the Secretary of State for the execution of works.

681. Loans from the Secretary of State for the execution of works.

The Secretary of State¹, with the approval of the Treasury², may out of money issued to him for the purpose out of the National Loans Fund³ give to a harbour authority⁴ assistance by way of loan⁵. Such a loan may be in respect of expenses incurred by the authority: (1) in executing (at a harbour⁶ which in the exercise and performance of statutory powers and duties the authority is engaged in improving, maintaining or managing⁷) works for the improvement, maintenance or management of the harbour⁸; (2) in acquiring plant or equipment⁹ required for the carrying out at the harbour of harbour operations¹⁰; (3) in acquiring land¹¹ required for the purposes of the harbour or an extension of it¹². The Secretary of State must, however, be satisfied that the expenses are such as ought properly to be regarded as of a capital nature¹³. A loan may also be made to enable the harbour authority to repay the whole or part of a sum due by way of the payment of interest on a loan made to it in respect of the expenses mentioned above¹⁴.

No assistance may be given under this power¹⁵ for the repayment of any part of the principal of a loan which falls due for repayment more than five years from the date on which the loan was made or for the payment of interest on a loan for any period beginning more than five years

from that date¹⁶. Nor may such assistance at any time be given to a harbour authority unless at that time the harbour is not a fishery harbour¹⁷.

The aggregate amount of loans made by the Secretary of State under these powers and certain other powers¹⁸ must not exceed £200m or, if so provided by resolution of the House of Commons, £300m¹⁹. Any loans which the Secretary of State may make²⁰ must be repaid to him at such times and by such methods, and interest on them must be paid to him at such rates and at such times, as he may, with Treasury approval, direct²¹.

1 As to the Secretary of State see PARA 603 ante. This provision, as enacted, refers to 'the minister', who is defined as the Minister of Transport: see the Harbours Act 1964 ss 11(1), 57(1). As to the devolution of these functions to the Secretary of State see PARA 603 ante.

2 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

3 As to the National Loans Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 727-739; FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1334.

4 For the meaning of 'harbour authority' see PARA 619 ante.

5 Harbours Act 1964 s 11(1) (amended by the National Loans Act 1968 s 2, Sch 1; and the Transport Act 1981 s 40(1), Sch 12 Pt II).

6 For the meaning of 'harbour' see PARA 611 ante.

7 As to references to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties see PARA 605 note 5 ante.

8 Harbours Act 1964 s 11(1)(a)(i). The expenses in respect of which loans may be made to a harbour authority under s 11(1)(a) include expenses incurred by the authority in executing works for the construction, in the exercise and performance of statutory powers and duties, of a harbour which the authority proposes to become engaged in improving, maintaining or managing: Docks and Harbours Act 1966 s 40(5)(a). Assistance given under the Harbours Act 1964 s 11(1) (as amended) in respect of expenses incurred in the execution of any works may include a sum in respect of costs in or in connection with the preparation of plans and specifications of the works, reports with respect to them and estimates of the expenses to be incurred for the purposes of their execution and a sum in respect of the remuneration of any architect, engineer or other person employed in an advisory or supervisory capacity in connection with the execution of the works: s 11(2).

9 'Plant or equipment', except where the context otherwise requires, includes vessels: *ibid* s 57(1).

10 *Ibid* s 11(1)(a)(ii). The expenses in respect of which loans may be made to a harbour authority under s 11(1)(a) include expenses incurred by the authority in acquiring plant or equipment required for the carrying out of harbour operations at a harbour which the authority is constructing or proposing to construct: Docks and Harbours Act 1966 s 40(5)(b). For the meaning of 'harbour operations' see PARA 605 note 8 ante.

11 For the meaning of 'land' see PARA 605 note 8 ante.

12 Harbours Act 1964 s 11(1)(a)(iii). The expenses in respect of which loans may be made to a harbour authority under s 11(1)(a) include expenses incurred by the authority in acquiring land for the purpose of constructing the harbour in the exercise of statutory powers and duties: see the Docks and Harbours Act 1966 s 40(5)(c).

13 Harbours Act 1964 s 11(1).

14 *Ibid* s 11(1)(b).

15 *Ie* under *ibid* s 11(1) (as amended): see the text to notes 1-14 *supra*.

16 *Ibid* s 11(3).

17 *Ibid* s 11(4). For the meaning of 'fishery harbour' see PARA 612 ante.

18 *Ie* the aggregate of loans made under *ibid* s 11 (as amended) and the Harbours (Loans) Act 1972 s 1 (as amended), and payments under s 3 (see PARA 682 *post*): s 4(1).

19 *Ibid* s 4(1).

20 le under the powers conferred by the Harbours Act 1964 s 11 (as amended) or the Harbours (Loans) Act 1972 s 1 (as amended) (see PARA 682 post): Harbours Act 1964 s 43(1) (amended by the Transport Act 1981 s 40(1), Sch 12 Pt II); Harbours (Loans) Act 1972 s 1(4) (amended by the Transport Act 1981 Sch 12 Pt II).

21 Harbours Act 1964 s 43(1) (as amended: see note 20 supra); Harbours (Loans) Act 1972 s 1(4) (as amended: see note 20 supra). The Treasury may issue out of the National Loans Fund to the Secretary of State such sums as are necessary to enable him to make loans under the Harbours Act 1964 s 11 (as amended), or the Harbours (Loans) Act 1972 s 1 (as amended): Harbours Act 1964 s 43(2) (amended by the National Loans Act 1968 Sch 1; and the Transport Act 1981 Sch 12 Pt II); Harbours (Loans) Act 1972 s 1(4) (as so amended). Any sums received by the Secretary of State under the Harbours Act 1964 s 43(1) (as amended) or the Harbours (Loans) Act 1972 s 1 (as amended) must be paid into the National Loans Fund: Harbours Act 1964 s 43(4) (amended by the National Loans Act 1968 s 24(2), Sch 1, Sch 6 Pt I); Harbours (Loans) Act 1972 s 1(4) (as so amended). As respects each financial year the Secretary of State must prepare in such form and manner as the Treasury may direct an account of sums issued to him under the Harbours Act 1964 s 43 (as amended) or the Harbours (Loans) Act 1972 s 1 (as amended) and of the sums paid into the National Loans Fund under the Harbours Act 1964 s 43(4) (as amended) or the Harbours (Loans) Act 1972 s 1 (as amended) and of the disposal by him of those sums respectively, and send it to the Comptroller and Auditor General not later than the end of November following the year; and the Comptroller and Auditor General must examine, certify and report on the account and lay copies of it, with his report, before each House of Parliament: Harbours Act 1964 s 43(5) (amended by the National Loans Act 1968 Sch 1); Harbours (Loans) Act 1972 s 1(4) (as so amended). 'Financial year' means, in relation to matters relating to the Consolidated Fund, the National Loans Fund, moneys provided by Parliament, the Exchequer, or central taxes or finance, the 12 months ending with 31 March: Interpretation Act 1978 s 5, Sch 1. As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

The Secretary of State may, with the consent of the Treasury, release each of the Port of London Authority and the Mersey Docks and Harbour Company from liability to repay some of the money lent under, inter alia, the Harbours Act 1964 s 11 (as amended): see the Ports (Reduction of Debt) Act 1983 s 1(1). As to the Port of London Authority see PARAS 623-627 ante.

UPDATE

681-686 Loans from the Secretary of State for the execution of works ... Conditions and regulations generally

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/8. BORROWING, FINANCIAL ASSISTANCE AND ACCOUNTS/682. Loans from the Secretary of State to pay off capital debts etc.

682. Loans from the Secretary of State to pay off capital debts etc.

Where it appears to the Secretary of State¹ that a harbour authority² is, or is likely to be, unable to:

- 98 (1) pay at the due time the whole or part of any debt³ properly chargeable to capital account⁴; or
- 99 (2) repay or pay off at the due time the whole or part of a temporary loan⁵ made to it or an overdraft granted to it⁶,

and it also appears to him that the financial prospects of the authority justify making it a loan to enable it to make the payment or repayment, then with Treasury approval he may make the authority a loan for that purpose⁷. The purposes for which a harbour authority may borrow

money under any statutory provision⁸ include power to borrow for a purpose for which a loan may be made under the provision⁹ described above¹⁰.

Where before 23 March 1972¹¹ a loan has been made by the Secretary of State to a harbour authority for any purpose for which a loan could be made on or after that date, an amount equal to the principal of the loan must be issued to the Secretary of State out of the National Loans Fund¹². Any sums received by the Secretary of State by way of repayment of the principal of any such loan, or payment of interest on it, must be paid into that fund¹³. The Secretary of State must, as respects each financial year¹⁴, prepare in the form and manner directed by the Treasury an account of sums issued to him for the purpose of enabling him to make any such loan, of the sums issued to him out of the National Loans Fund¹⁵ and of the sums to be paid into that fund¹⁶ and of his disposal of those sums¹⁷. He must send the account to the Comptroller and Auditor General¹⁸ not later than the end of November following the end of the financial year, and the Comptroller and Auditor General must examine, certify and report on the account and lay copies of it, together with his report, before each House of Parliament¹⁹.

1 As to the Secretary of State see PARA 603 ante.

2 For the meaning of 'harbour authority' see PARA 619 ante; definition applied by the Harbours (Loans) Act 1972 s 5(1).

3 Ie any debt whether incurred before or after 23 March 1972, being the date of the passing of the Harbours (Loans) Act 1972.

4 Ibid s 1(1)(a).

5 Ie a temporary loan or overdraft granted to the authority, whether before or after 23 March 1972.

6 Harbours (Loans) Act 1972 s 1(1)(b).

7 Ibid s 1(1) (amended by the Transport Act 1981 s 40(1), Sch 12 Pt II). The loan must be made out of money issued to the Secretary of State out of the National Loans Fund for the purpose: the Harbours (Loans) Act 1972 s 1(1) (as so amended). He may not make a loan under s 1(1) (as amended) to enable a payment or repayment to be made by a harbour authority of the whole or any part of a debt, loan or overdraft to the extent that the debt was incurred, the loan made or the overdraft granted in relation to a fishery harbour: s 1(2). For the meaning of 'fishery harbour' see PARA 612 ante; definition applied by s 5(1). As to the National Loans Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 727-739; FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1334. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

8 For the meaning of 'statutory provision' see PARA 628 note 9 ante; definition applied by ibid s 5(1).

9 Ie under ibid s 1 (as amended).

10 Ibid s 1(3). The provisions of s 1 (as amended) are expressed to be without prejudice to the Harbours Act 1964 s 11 (as amended) (see PARA 681 ante), or any other enactment relating to loans to harbour authorities: Harbours (Loans) Act 1972 s 1(5). For the meaning of 'enactment' see PARA 628 note 26 ante. Loans made by the Secretary of State under s 1 (as amended) are subject to the Harbours Act 1964 s 43 (as amended) (see PARA 681 ante): Harbours (Loans) Act 1972 s 1(4) (amended by the Transport Act 1981 Sch 12 Pt II).

11 Ie the date of the passing of the Harbours (Loans) Act 1972.

12 Ibid s 3(1).

13 Ibid s 3(2). As to the limit on the aggregate of loans made by the Secretary of State see PARA 681 ante.

14 For the meaning of 'financial year' see PARA 681 note 21 ante.

15 Ie issued out of the National Loans Fund under the Harbours (Loans) Act 1972 s 3(1): see the text to notes 11-12 supra.

16 Ie paid into the National Loans Fund under ibid s 3(2): see the text to note 13 supra.

17 Ibid s 3(3).

18 As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

19 Harbours (Loans) Act 1972 s 3(3).

UPDATE

681-686 Loans from the Secretary of State for the execution of works ... Conditions and regulations generally

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/8. BORROWING, FINANCIAL ASSISTANCE AND ACCOUNTS/683. Financial assistance in respect of fishing facilities.

683. Financial assistance in respect of fishing facilities.

The Secretary of State¹ may give to a public authority or an association of persons or company not trading for profit assistance by way of grant or by way of loan, or partly in the one way and partly in the other, in respect of expenses incurred by it for the purposes of the execution of works for the construction, improvement or repair of a harbour, pier, quay, jetty, boatslip or slipway in Great Britain², or of the landward approaches to it or of any buildings, structures or apparatus there³. The works must appear to the Secretary of State to be requisite for efficient functioning⁴, and he must be satisfied that the giving of the assistance will promote the maintenance or development of the fishing industry⁵.

The assistance given in respect of the execution of any works may include a sum in respect of costs incurred in or in connection with the preparation of plans and specifications of the works, reports with respect to them and estimates of the expenses to be incurred for their execution and a sum in respect of the remuneration of any architect, engineer or other person employed in an advisory or supervisory capacity in connection with the execution of the works⁶.

Where assistance in respect of expenses incurred for the purposes of the execution of any works has been given⁷ by the Secretary of State by way of loan, he may, with Treasury consent, remit, wholly or in part, the payment of interest on, or the repayment of the principal of, the loan, or both, if he is satisfied that such payment or repayment cannot be made in full or cannot be made in full without undue hardship⁸.

1 This provision, as enacted, refers to 'the appropriate minister', who is defined, in relation to England and Wales, as the Minister of Agriculture, Fisheries and Food: see the Fisheries Act 1955 s 2(1), (4)(a) (amended by the Transfer of Functions (Ministry of Food) Order 1955, SI 1955/554, art 3(3)). The functions of the Minister of Agriculture, Fisheries and Food are now transferred to the Secretary of State for the Environment, Food and Rural Affairs: see the Secretaries of State for Transport, Local Government and the Regions and for Environment, Food and Rural Affairs Order 2001, SI 2001/2568; and PARA 603 ante. In relation to fishery harbours in Wales the functions of the Minister of Agriculture, Fisheries and Food under the Fisheries Act 1955 are transferred to the Welsh Ministers: see PARA 604 ante.

2 For the meaning of 'Great Britain' see PARA 613 note 1 ante.

3 Fisheries Act 1955 s 2(1). The assistance may be given on such terms and subject to such conditions as the Secretary of State may with Treasury approval determine: s 2(1). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

- 4 le the efficient functioning of the harbour etc: see *ibid* s 2(1).
- 5 *Ibid* s 2(1).
- 6 *Ibid* s 2(2). Where an application under s 2(1) (see the text to notes 1-5 *supra*) to the Secretary of State for assistance is refused, he may, notwithstanding the refusal, make a payment in respect of costs incurred in or in connection with the preparation of plans and specifications of the works to which the application related, reports with respect to the works, and estimates of the expenses to be incurred for the purposes of the execution of those works, if he is satisfied that in all the circumstances it is proper to do so: s 2(2).
- 7 le given under *ibid* s 2(1): see the text to notes 1-5 *supra*.
- 8 *Ibid* s 2(3). As to fisheries generally see AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 789 et seq.

UPDATE

681-686 Loans from the Secretary of State for the execution of works ... Conditions and regulations generally

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/8. BORROWING, FINANCIAL ASSISTANCE AND ACCOUNTS/684. Accounts of harbour authorities.

684. Accounts of harbour authorities.

Subject as mentioned below, every statutory harbour undertaker¹ must prepare an annual statement of accounts relating to the harbour activities² and to any associated activities³ carried on by him⁴. Where a statutory harbour undertaker is a parent undertaking with subsidiary undertakings⁵ which carry on harbour activities or any associated activities the company must also prepare group accounts relating to the harbour activities and associated activities carried on by it and its subsidiary undertakings⁶. The above requirements are not satisfied by the preparation of a statement of accounts which relates to other matters in addition to harbour activities and associated activities⁷. Any person⁸ by whom a statement of accounts is prepared in accordance with the above requirements must: (1) send to the Secretary of State a copy of the statement together with a copy of the auditor's report on it⁹; and (2) prepare and send to the Secretary of State a report on the state of affairs disclosed by the statement¹⁰.

Subject to any regulations made by the Secretary of State¹¹, the provisions of the Companies Act 1985 as to the form and contents of accounts and reports required to be prepared under that Act¹² apply to accounts and reports required to be prepared in relation to harbour activities and associated activities¹³. The Secretary of State may make provision by regulations¹⁴ with respect to the form and contents of accounts and reports to be prepared¹⁵ prescribing cases in which the provisions of the Companies Act 1985¹⁶ as to the form and content of accounts are not to apply¹⁷, modifying those provisions¹⁸, and prescribing requirements additional to those imposed by those provisions¹⁹.

Where a statutory harbour undertaker is obliged by a statutory provision²⁰ of local application to prepare accounts then, so far as those accounts relate to harbour activities or associated activities, any requirement of the statutory provisions of local application as to the form and contents of the accounts are to be treated as satisfied by the preparation of accounts in the manner specified above²¹.

1 'Statutory harbour undertaking' means an undertaking or part of an undertaking whose activities consist wholly or mainly of the improvement, maintenance or management of a harbour in the exercise and performance of statutory powers and duties; and 'statutory harbour undertaker' is to be construed accordingly: Harbours Act 1964 s 42(9) (s 42 substituted by the Transport Act 1981 s 18(1), Sch 6 para 10). For the meaning of 'harbour' see PARA 611 ante. For the meanings of 'statutory powers' and 'statutory duties' see PARA 605 note 5 ante. The Harbours Act 1964 s 42 (as substituted and amended) does not apply to: (1) the British Waterways Board (s 42(11)(a) (as so substituted)); (2) a statutory harbour undertaker whose undertaking consists wholly or mainly in the improvement, maintenance and management of a fishery harbour (s 42(11)(b) (as so substituted)); (3) a statutory harbour undertaker of a class excepted from that provision by regulations made by the Secretary of State (s 42(11)(c) (as so substituted)). As to the British Waterways Board see WATER AND WATERWAYS vol 101 (2009) PARA 725 et seq. For the meaning of 'fishery harbour' see PARA 612 ante. As to the Secretary of State see PARA 603 ante. Regulations made under the powers conferred by s 42 (as substituted and amended) must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 54(1), (2).

The Harbours Act 1964 s 42 (as substituted and amended) does not apply to a statutory harbour undertaker in respect of any undertaking carried on by him which is used wholly or mainly for ships resorting to the harbour in question wholly or mainly for bringing or receiving goods which have been manufactured or produced by the statutory harbour undertaker or which are to be used by him for the manufacture or production of goods or electricity: Statutory Harbour Undertakings (Accounts etc) Regulations 1983, SI 1983/931, reg 6. For these purposes, the relevant activities carried on by a holding company or subsidiary of the statutory harbour undertaker or the members of a consortium who between them own, directly or indirectly, more than half the issued share capital of the statutory harbour undertaker are to be treated as carried on by the statutory harbour undertaker: reg 6. For the meaning of 'ship' see PARA 611 note 2 ante; and for the meaning of 'goods' see PARA 611 note 5 ante.

2 'Harbour activities' means activities involved in carrying on a statutory harbour undertaking or carrying out harbour operations: Harbours Act 1964 s 42(9) (as substituted: see note 1 supra). For the meaning of 'harbour operations' see PARA 605 note 8 ante.

3 'Associated activities', in relation to any harbour activities, means such activities as may be prescribed in relation to those activities by regulations made by the Secretary of State: *ibid* s 42(9) (as substituted: see note 1 supra). Regulations under s 42(9) (as substituted) may be made so as to apply to all undertakers, to a class of undertakers or to a particular undertaker: s 42(10) (as so substituted). As to the making of such regulations see note 1 supra.

In relation to the harbour activities carried on by a statutory harbour undertaker who is not a local authority or a natural person, or by a subsidiary of such a statutory harbour undertaker, all activities other than harbour activities and the activities of a pilotage authority carried on by that undertaker or subsidiary are associated activities: Statutory Harbour Undertakings (Accounts etc) Regulations 1983, SI 1983/931, reg 4(1). 'Local authority' means, in relation to England, the council of a county or district, and in relation to Wales, the council of a county or county borough: see reg 4(2); and see also the Local Government Act 1972 s 20(1)(a), (5) (substituted by the Local Government (Wales) Act 1994 s 1(1)); and the Local Government (Wales) Act 1994 s 17(1)(b), (5)(a). As to local government areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq. Subsequently, the Secretary of State, in relation to the harbour activities of a statutory harbour undertaker who is a competent harbour authority within the meaning of the Pilotage Act 1987 (but with the exception of one description of harbour authority), prescribed the pilotage activities of such an undertaker as associated activities: see the Statutory Harbour Undertakings (Pilotage Accounts) Regulations 1988, SI 1988/2216; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 577.

4 Harbours Act 1964 s 42(1) (as substituted: see note 1 supra). There are also provisions in the Harbours, Docks and Piers Clauses Act 1847 relating to the keeping of accounts in respect of rates: see ss 49, 50. The provisions of the Harbours, Docks and Piers Clauses Act 1847 only apply where they are incorporated in local legislation (see PARA 602 ante), but ss 49, 50 are never incorporated in modern local legislation.

5 'Parent undertaking' and 'subsidiary undertaking' have the same meanings as in the Companies Act 1985 Pt VII (ss 221-262A) (as amended) (see COMPANIES vol 14 (2009) PARA 26): Harbours Act 1964 s 42(9) (s 42 as substituted (see note 1 supra); and definitions further substituted by the Companies Act 1989 s 23, Sch 10 para 26(4)).

6 Harbours Act 1964 s 42(2) (s 42 as substituted (see note 1 supra); and s 42(2) further substituted by the Companies Act 1989 Sch 10 para 26(2)).

7 Harbours Act 1964 s 42(3) (as substituted: see note 1 supra).

8 For the meaning of 'person' see PARA 605 note 4 ante.

- 9 Harbours Act 1964 s 42(5)(a) (as substituted: see note 1 supra).
- 10 Ibid s 42(5)(b) (as substituted: see note 1 supra).
- 11 Ie regulations made under ibid s 42(7) (as substituted and amended): see the text and notes 14-19 infra.
- 12 As to the form and contents of accounts to be prepared under the Companies Act 1985 see COMPANIES vol 15 (2009) PARA 708 et seq.
- 13 Harbours Act 1964 s 42(6) (as substituted (see note 1 supra); and further amended by the Companies Act 1981 s 119(4), Sch 3; and the Companies Consolidation (Consequential Provisions) Act 1985 s 30, Sch 2). The provisions relating to individual company accounts are to apply to statements required to be prepared in relation to individual statutory harbour undertakings: Harbours Act 1964 s 42(6)(a) (as so substituted; and further amended by the Companies Act 1989 ss 23, 212, Sch 10 para 26(3), Sch 24). The provisions relating to group accounts are to apply to statements required to be prepared where a statutory harbour undertaking is a parent undertaking with subsidiary undertakings: Harbours Act 1964 s 42(6)(b) (as so substituted). The provisions relating to the directors' report are to apply to reports required to be prepared and sent to the Secretary of State on the state of affairs disclosed by a statement: s 42(6)(c) (as so substituted).
- 14 Such regulations may be made so as to apply to all undertakers, to a class of undertakers or to a particular undertaker: ibid s 42(10) (as substituted: see note 1 supra). As to the making of such regulations see note 1 supra.
- 15 Ie under ibid s 42 (as substituted and amended).
- 16 Ie the provisions of the Companies Act 1985 specified in the Harbours Act 1964 s 42(6) (as substituted and amended): see the text to notes 11-13 supra.
- 17 Ibid s 42(7)(a) (as substituted (see note 1 supra); and further amended by the Companies Act 1981 Sch 3; and the Companies Consolidation (Consequential Provisions) Act 1985 Sch 2). The provisions of the Companies Act 1985 as to the form and contents of accounts are not to apply in the case of a person who carries on a statutory harbour undertaking in which the annual turnover of the undertaking is or was less than £250,000 in certain financial years: see the Statutory Harbour Undertakings (Accounts etc) Regulations 1983, SI 1983/931, reg 2; and see also the Interpretation Act 1978 s 17(2)(a).
- 18 Harbours Act 1964 s 42(7)(b) (as substituted: see note 1 supra). The Companies Act 1985 has effect in its application to accounts and reports required to be prepared under the Harbours Act 1964 s 42 (as substituted and amended) as if the Companies Act 1985 ss 246-249 (as amended) (which provide that certain companies are entitled to the benefit of the exemption specified in those provisions in relation to the accounts to be delivered to the registrar of companies were omitted: see the Statutory Harbour Undertakings (Accounts etc) Regulations 1983, SI 1983/931, reg 3; and see also the Interpretation Act 1978 s 17(2)(a).
- 19 Harbours Act 1964 s 42(7)(c) (as substituted: see note 1 supra). Where an annual statement of accounts prepared under s 42(1) or (2) (as substituted) (see the text to notes 1-6 supra) relates to associated activities then, in addition to complying with the requirements of the Companies Act 1985, the statement of accounts is to include a statement of gross revenue for the period in question in relation to those associated activities: see the Statutory Harbour Undertakings (Accounts etc) Regulations 1983, SI 1983/931, reg 5; and see also the Interpretation Act 1978 s 17(2)(a). This requirement does not apply to the associated activities consisting of pilotage activities of a statutory harbour undertaker who is a competent harbour authority within the meaning of the Pilotage Act 1987 (see note 3 supra): Statutory Harbour Undertakings (Pilotage Accounts) Regulations 1988, SI 1988/2216, reg 3(4).
- 20 For the meaning of 'statutory provision' see PARA 628 note 9 ante.
- 21 Harbours Act 1964 s 42(8).

UPDATE

681-686 Loans from the Secretary of State for the execution of works ... Conditions and regulations generally

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

684 Accounts of harbour authorities

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 1--See also Harbours Act 1964 s 54(3), (4) (added by Marine and Coastal Access Act 2009 Sch 21 para 3(2)).

NOTE 5--Definitions of 'parent undertaking' and 'subsidiary undertaking' amended to take account of the coming into force of the Companies Act 2006: SI 2008/948.

TEXT AND NOTE 12--Now subject to the provisions of the Companies Act 2006: 1964 Act s 42(6) (further amended by SI 2007/2194, SI 2008/948).

TEXT AND NOTE 16--Now the provisions of the Companies Act 2006: 1964 Act s 42(7)(a) (further amended by SI 2008/948).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/8. BORROWING, FINANCIAL ASSISTANCE AND ACCOUNTS/685. Audit of harbour authority accounts.

685. Audit of harbour authority accounts.

Virtually all harbour authorities which are trust ports¹ or statutory harbour companies² have provisions in their local legislation³ for the appointment of auditors. In the case of all such provisions which were in force immediately before 1 January 1986⁴, any requirement that the auditor should be appointed, or that his appointment should be approved, by a Minister of the Crown ceased to have effect on that date and any former ministerial power of appointment became exercisable by the harbour authority⁵. A person is not to be appointed as auditor of a relevant harbour authority unless he is eligible for appointment as a company auditor⁶. Where provision is made for the auditing of accounts prepared by any person⁷ otherwise than under the Harbours Act 1964⁸ which relate to harbour activities⁹ carried on by him (whether or not they relate to other matters) that provision applies also to any accounts prepared by him under the Harbours Act 1964¹⁰.

1 As to trust ports see PARA 621 note 8 ante.

2 As to such companies see PARA 621 ante. The Ports (Finance) Act 1985 s 4 (as amended) refers to any 'relevant harbour authority', for the meaning of which see PARA 679 note 2 ante.

3 Ibid s 4 (as amended) refers to an 'existing local provision', for the meaning of which see PARA 679 note 2 ante.

4 I.e. the date on which the Ports (Finance) Act 1985 came into force: see s 7; and the Ports (Finance) Act 1985 (Commencement) Order 1985, SI 1985/1153.

5 See the Ports (Finance) Act 1985 s 4(1). Where a Minister of the Crown considers it necessary or appropriate to do so in consequence of s 4, he may by order repeal or revoke any existing local provision which in his opinion has ceased to have effect, or make such amendments in any such provision as he thinks fit: s 5(2). Such an order may contain such transitional, supplemental or incidental provisions as he thinks appropriate: s 5(3). The power to make such an order is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 5(4). Such orders being of local effect are not recorded in this work.

6 Ibid s 4(2) (amended by the Companies Act 1989 (Eligibility for Appointment as Company Auditor) (Consequential Amendments) Regulations 1991, SI 1991/1997, reg 2, Schedule para 54). As to a person's eligibility for appointment as a company auditor see the Companies Act 1989 s 25; and COMPANIES vol 15 (2009) PARA 969.

7 For the meaning of 'person' see PARA 605 note 4 ante.

8 Ie otherwise than under the Harbours Act 1964 s 42 (as substituted and amended): see PARA 684 ante.

9 For the meaning of 'harbour activities' see PARA 684 note 2 ante.

10 Harbours Act 1964 s 42(4) (substituted by the Transport Act 1981 s 18(1), Sch 6 para 10).

UPDATE

681-686 Loans from the Secretary of State for the execution of works ... Conditions and regulations generally

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

685 Audit of harbour authority accounts

TEXT AND NOTE 6--1985 Act s 4(2) further amended by SI 2008/948 to refer to eligibility for appointment as a statutory auditor under the Companies Act 2006 Pt 42 (ss 1209-1264).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(1) BYELAWS, CONDITIONS AND REGULATIONS/686. Conditions and regulations generally.

9. MANAGEMENT AND REGULATION

(1) BYELAWS, CONDITIONS AND REGULATIONS

686. Conditions and regulations generally.

A harbour authority¹ has power to make such use of services and facilities provided by it at a harbour², which, in the exercise and performance of statutory powers and duties, it is engaged in improving, maintaining or managing³, subject to such terms and conditions⁴ as it thinks fit⁵. However, this power does not apply to charges⁶ as to which the authority's discretion is limited by a statutory provision⁷, whether by specifying or providing for specifying charges to be made, or fixing or providing for fixing charges, or otherwise⁸.

In addition, harbour authorities have statutory powers to make byelaws⁹. Regulations may be made in relation to dockyard ports¹⁰. Harbour masters have power to give directions¹¹ and the local legislation of harbour authorities commonly includes powers to regulate shipping movements by general and special directions¹².

1 For these purposes, 'harbour authority' has the same meaning as in the Harbours Act 1964 s 26 (see PARA 666 note 2 ante): s 40(2).

2 For the meaning of 'harbour' see PARA 611 ante.

3 As to references to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties see PARA 605 note 5 ante.

4 Conditions imposed must be reasonable and related to the objects of the Act: see *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1958] 1 QB 554, [1958] 1 All ER 625, CA; revsd on another point [1960] AC 260, [1959] 3 All ER 1, HL. See also JUDICIAL REVIEW vol 61 (2100) PARA 623.

5 Harbours Act 1964 s 40(1). This provision is subservient to the Harbours, Docks and Piers Clauses Act 1847 s 33 (see PARA 616 ante) where that provision is incorporated with the local legislation of the harbour authority in question: *R v Dover Harbour Board, ex p Peter Gilder and Sons, R v Associated British Ports, ex p Plymouth City Council*, reported with *R v Coventry City Council, ex p Phoenix Aviation* [1995] 3 All ER 37. The Harbours Act 1964 s 40(1) does not apply to the British Waterways Board: see ss 26(5)(a), 40(2); and PARA 666 note 2 ante. However, a similar statutory provision applies to the Board: see the Transport Act 1962 s 43(3) (as amended); and WATER AND WATERWAYS vol 101 (2009) PARAS 785, 827. The provisions of the Harbours Act 1964 s 40 apply to Associated British Ports (see PARA 622 ante) as they apply to harbour authorities generally: Transport Act 1981 s 14(1), Sch 4 para 2(a).

6 For the meaning of 'charges' see PARA 628 note 35 ante. As to charges generally see PARA 666 et seq ante.

7 For the meaning of 'statutory provision' see PARA 628 note 9 ante.

8 Harbours Act 1964 s 40(1).

9 As to byelaws see PARA 687 et seq post.

10 As to regulations for dockyard ports see PARA 689 post. For the meaning of 'dockyard port' see PARA 613 ante.

11 As to the powers of harbour masters see PARA 690 et seq post.

12 See eg the Port of London Act 1968 ss 111, 112 (s 111 amended by the Port of London Authority Harbour Revision Order 2003, SI 2003/2556, art 3). The Port of London Authority also has power to give directions in respect of vessels at the docks: see the Port of London Act 1968 s 113. As to the Port of London Authority see PARAS 623-627 ante.

UPDATE

681-686 Loans from the Secretary of State for the execution of works ... Conditions and regulations generally

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(1) BYELAWS, CONDITIONS AND REGULATIONS/687. General power of harbour authority to make byelaws.

687. General power of harbour authority to make byelaws.

There is a statutory power¹ for harbour authorities² to make, repeal or alter byelaws³. Byelaws may be made from time to time and for all or any of the following purposes as the authority thinks fit:

- 100 (1) for regulating the use of the harbour, dock or pier⁴;
- 101 (2) for regulating the exercise of the powers vested in the harbour master⁵;

- 102 (3) for regulating the admission of vessels⁶ into or near the harbour, dock or pier⁷, and their removal out of and from it, and for their good order and government while within the harbour or dock, or at or near the pier⁸;
- 103 (4) for regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of all goods⁹ within the limits¹⁰ of the harbour, dock or pier and the harbour authority's premises¹¹;
- 104 (5) for regulating, with the consent of the Commissioners for Revenue and Customs¹², the hours during which the gates or entrances or outlets to the harbour, dock or pier are to be open¹³;
- 105 (6) for regulating the duties and conduct of all persons¹⁴ who are employed in the harbour, dock or pier and the harbour authority's premises¹⁵;
- 106 (7) for regulating the use of fires¹⁶ and lights¹⁷ within the harbour, dock or pier and the premises belonging to it, and in any vessel in the harbour or dock, or at or near the pier, or within the prescribed limits, if any¹⁸;
- 107 (8) for preventing damage or injury to any vessel or goods within the harbour or dock, or at or near the pier, or on the harbour authority's premises¹⁹;
- 108 (9) for regulating the use of the cranes²⁰, weighing machines, weights and measures²¹ belonging to the harbour authority, and the duties and conduct of weighers and meters²² employed by it²³;
- 109 (10) for regulating the duties and conduct of the porters and carriers employed on the harbour authority's premises and fixing the rates²⁴ to be paid to it for carrying any goods, articles or things from or to the premises²⁵.

The harbour authority may impose by the byelaws such reasonable penalties as it thinks fit for every breach of such byelaws²⁶.

There is also a separate power for a harbour authority to make byelaws prohibiting the entry into its harbour of dangerous substances, or regulating the entry, carriage, handling and storage of dangerous substances²⁷. Power to make byelaws for certain environmental purposes may be conferred on a harbour authority by a harbour revision order²⁸.

1 Ie a power conferred by the Harbours, Docks and Piers Clauses Act 1847. The provisions of this Act only apply where they are incorporated in local legislation: see PARA 602 ante. Additional powers for harbour authorities to make, repeal or alter byelaws may also be contained in local legislation.

2 Ibid ss 83, 84 (as amended) refer to 'the undertakers', for the meaning of which see PARA 602 note 2 ante. In practice, the undertakers will always be a harbour authority within the meaning of the Harbours Act 1964: see PARA 619 ante.

3 See the Harbours, Docks and Piers Clauses Act 1847 s 83. As to the procedure for making such byelaws see PARA 688 post. The byelaws must not be repugnant to the laws of that part of the United Kingdom where they are to have effect, and must not be repugnant to the Harbours, Docks and Piers Clauses Act 1847 or the special Act: s 83. For the meaning of 'United Kingdom' see PARA 613 note 1 ante; and for the meaning of 'the special Act' see PARA 602 note 2 ante. A trade association may not dispute the validity of byelaws as agent for its members; persons suing as individuals and not through the Attorney General as representing the public must, when contesting the validity of byelaws, prove special damage to enable them to recover damages: *London Association of Shipowners and Brokers v London and India Docks Joint Committee* [1892] 3 Ch 242, CA.

4 Harbours, Docks and Piers Clauses Act 1847 s 83. For the meaning of 'harbour, dock or pier' see PARA 663 note 3 ante.

5 Ibid s 83. For the meaning of 'the harbour master' see PARA 690 note 2 post. As to harbour masters and their powers see PARA 690 et seq post.

6 For the meaning of 'vessel' see PARA 672 note 3 ante.

7 Admission to the harbour may also be regulated under the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37 (as amended), byelaws made thereunder (see PARA 700 et seq post), and the Dangerous Vessels Act 1987 (see PARA 698 post), and by general directions given by a harbour authority.

8 Harbours, Docks and Piers Clauses Act 1847 s 83. The International Regulations for Preventing Collisions at Sea (London, 20 October 1972; TS 77 (1977); Cmnd 6962) rr 1-36, Annexes I-III (as amended), which are now set out in Merchant Shipping Notice No M 1642/COLREG 1, apply to all vessels upon the high seas and in all waters connected with the high seas which are navigable by sea-going vessels and currently have effect as respects United Kingdom ships and other ships in United Kingdom waters by virtue of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 4(1). As to the International Regulations for Preventing Collisions at Sea 1972 see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 715 et seq. However, nothing in the regulations interferes with the operation of special rules made by an appropriate authority for roadsteads, harbours, rivers, lakes or inland waterways connected with the high seas and navigable by sea-going vessels, although such rules are to conform as closely as possible to the regulations: see the International Regulations for Preventing Collisions at Sea 1972 r 1(b); the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75; and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 715 et seq. If there is a conflict between a local rule and one of the rules of the International Regulations for Preventing Collisions at Sea 1972 the local rule prevails: *The Carlotta* [1899] P 223, 8 Asp MLC 544.

9 For the meaning of 'goods' see PARA 663 note 2 ante. Byelaws prohibiting persons dealing in marine stores are in excess of the powers conferred by the Harbours, Docks and Piers Clauses Act 1847 s 83: *Chamberlain v Conway* (1888) 53 JP 214, DC. Byelaws have been held to be invalid which prohibited the removal of fish by motor vehicle and not by the undertakers' railway (*London and North Eastern Rly Co v British Trawlers' Federation Ltd* [1934] AC 279, HL) and which prohibited persons acting as 'lumpers' on board vessels without the permission of the undertakers (*Dick v Badart, Freres* (1883) 10 QBD 387).

10 As to the harbour limits see PARA 614 ante.

11 Harbours, Docks and Piers Clauses Act 1847 s 83.

12 As to the Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

13 Harbours, Docks and Piers Clauses Act 1847 s 83 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50).

14 This provision applies to all persons, including the harbour authority's employees, except officers of Revenue and Customs: Harbours, Docks and Piers Clauses Act 1847 s 83.

15 Ibid s 83.

16 There are statutory provisions in respect of combustible matter, with penalties for breach: see PARA 699 et seq post.

17 The International Regulations for Preventing Collisions at Sea 1972 contain detailed regulations as to lights on vessels: see rr 20-31; and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 739 et seq.

18 Harbours, Docks and Piers Clauses Act 1847 s 83.

19 Ibid s 83.

20 As to cranes see PARA 663 ante.

21 As to the weighing of goods see PARA 677 ante.

22 As to the appointment of weighers and meters see PARA 677 ante.

23 Harbours, Docks and Piers Clauses Act 1847 s 83.

24 For the meaning of 'rate' see PARA 616 note 4 ante.

25 Harbours, Docks and Piers Clauses Act 1847 s 83. Many harbour authorities have express statutory powers to make byelaws, either in addition to or in substitution for those conferred by s 83: see eg the Port of London Act 1968 ss 161-170 (as amended). Byelaws of harbour authorities, being of local application only, are not noted in this work.

26 Harbours, Docks and Piers Clauses Act 1847 s 84 (amended by virtue of the Criminal Justice Act 1982 ss 40, 46; the Criminal Justice Act 1988 s 57(1); and by the Statute Law (Repeals) Act 1993). The penalty may not exceed a fine of level 4 on the standard scale: Harbours, Docks and Piers Clauses Act 1847 s 84 (as so amended). As to the standard scale see PARA 605 note 13 ante. Penalty provisions are usually contained in the byelaws but, in a few cases, are included in the enabling powers in the relevant local legislation. Whether byelaws can impose, in addition to a fine for the original offence, a daily fine for a continuing offence depends

on the terms of the enabling power in the relevant local legislation. Unless modified for the purpose by the legislation which incorporates it, s 84 (as amended) does not enable byelaws under s 83 to impose a continuing penalty. For an example of powers to make byelaws which do enable byelaws thereunder to impose such a penalty see the Port of London Act 1968 s 167 (substituted by the Port of London Act 1982 s 3(2), Sch 1 para 9).

27 See the Dangerous Substances in Harbour Areas Regulations, SI 1987/37, reg 43, Sch 6; and PARA 709 post.

28 See the Harbours Act 1964 s 14(1), Sch 2 para 16A (as added); and PARA 628 ante.

UPDATE

687 General power of harbour authority to make byelaws

NOTE 26--Port of London Act 1968 s 167 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 5.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(1) BYELAWS, CONDITIONS AND REGULATIONS/688. Procedure for making byelaws.

688. Procedure for making byelaws.

Byelaws¹ must be in writing² and sealed with the harbour authority's³ common seal⁴. The procedure for the making and confirmation of byelaws under powers contained in a harbour authority's local legislation (including incorporated provisions of the Harbours, Docks, and Piers Clauses Act 1847) depends on the provisions of that local legislation⁵. There is a special procedure as respects byelaws relating to dangerous substances⁶.

1 As to the power to make byelaws under the Harbours, Docks and Piers Clauses Act 1847 see PARA 687 ante.

2 For the meaning of 'writing' see PARA 605 note 3 ante.

3 The Harbours, Docks and Piers Clauses Act 1847 s 83 refers to 'the undertakers', for the meaning of which see PARA 602 note 2 ante. In practice, the undertakers will always be a harbour authority within the meaning of the Harbours Act 1964: see PARA 619 ante.

4 Harbours, Docks and Piers Clauses Act 1847 s 83. The provisions of the Harbours, Docks and Piers Clauses Act 1847 apply only when incorporated in local legislation: see PARA 602 ante. If the undertakers are not a body corporate, the byelaws must be signed by the undertakers, or any two of them: s 83. As to the execution of deeds by companies see COMPANIES vol 14 (2009) PARA 288. A company regulated by the Companies Act 1985 need no longer have a common seal: see s 36A(3) (as added); and COMPANIES vol 14 (2009) PARA 288.

5 The Harbours, Docks and Piers Clauses Act 1847 ss 85-90 (as amended) contain a detailed byelaw-making procedure, and provide, inter alia: that byelaws affecting persons other than the undertakers or their officers or servants are not to come into operation until confirmed (see s 85 (amended by the Courts Act 1971 s 56(4), Sch 11 Pt IV)); that notice of application for confirmation of byelaws is to be given in one or more newspapers (see the Harbours, Docks and Piers Clauses Act 1847 s 86); that a copy of the proposed byelaws is to be open to inspection at the principal office of the undertakers (see s 87 (amended by virtue of the Decimal Currency Act 1969 s 10(1))); that, once confirmed, the byelaws must be published and available for inspection (see the Harbours, Docks and Piers Clauses Act 1847 s 88 (amended by the Criminal Justice Act 1982 s 46)); and that production of a written or printed copy of the byelaws is to be evidence of their existence and due making (see the Harbours, Docks and Piers Clauses Act 1847 s 90 (amended by the Courts Act 1971 Sch 11 Pt IV)). However, in practice these provisions are not now incorporated in the local legislation of harbour authorities. In most cases such local legislation applies the byelaw-making procedure laid down for local authorities under the Local Government Act 1972 ss 236, 238 (both as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARAS 556, 557, 568), with some modifications. These provide for the confirming authority to be the Minister of the Crown responsible for the ports and harbours of the kind in question and often provide for such minister to have power to confirm

byelaws with modifications. In the case of the Port of London Authority, the provisions for byelaws are contained in the Port of London Act 1968 Pt XI (ss 161-170) (as amended). As to the Port of London Authority see PARAS 623-627 ante.

6 See the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 43, Sch 6; and PARA 709 post.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(1) BYELAWS, CONDITIONS AND REGULATIONS/689. Regulations for dockyard ports.

689. Regulations for dockyard ports.

Her Majesty may by Order in Council¹ make regulations in relation to any dockyard port² for all or any of the following purposes:

- 110 (1) to prohibit the mooring or anchoring of vessels³ so as to obstruct navigation into, in or out of the port⁴;
- 111 (2) to appropriate any space as a mooring place or anchoring ground for the exclusive use of Her Majesty's vessels, but not so as to authorise any use of the space in such a manner as to obstruct navigation into, in or out of the port⁵;
- 112 (3) to prohibit or restrict the having of gunpowder, and the having or discharging of shotted or loaded guns, on board any vessel in any specified part of the port, and to regulate the loading and unloading of gunpowder in the port⁶;
- 113 (4) to restrict the use of fire and light, and the having of tar, oil or other combustible substances on board any vessel in any specified part of the port⁷;
- 114 (5) to prohibit the navigating of steam vessels at a greater than a specified speed in any specified part of the port⁸;
- 115 (6) to require the presence of at least one person at all hours of the day and night on board every vessel above a specified size moored, anchored or placed in any specified part of the port⁹;
- 116 (7) to prohibit or regulate the breaming¹⁰ of vessels in any specified part of the port¹¹.

Regulations may also be made for such other purposes as seem necessary from time to time with a view to the proper protection of Her Majesty's vessels, dockyards or property, or to the requirements of the Royal Navy¹². Any such Order in Council may impose such reasonable penalties as seem fit for any offence¹³.

Her Majesty may also by Order in Council, on the joint recommendation of the Secretary of State¹⁴ and the Secretary of State for Trade and Industry¹⁵, make rules in relation to any dockyard port concerning the lights or signals to be carried or used and the steps for avoiding collision to be taken, by Her Majesty's vessels and other vessels navigating the waters of the port and its approaches¹⁶.

1 Every Order in Council made under the Dockyard Ports Regulation Act 1865 must be laid before both Houses of Parliament: s 26. Orders made under the Dockyard Ports Regulation Act 1865 which are local in nature are not recorded in this work.

2 For the meaning of 'dockyard port' see PARA 613 ante.

3 'Vessel', includes ship, boat, lighter and craft of every kind, however propelled: Dockyard Ports Regulation Act 1865 s 2. Seaplanes on the surface of the water are deemed to be vessels: Civil Aviation Act 1982 s 97(2). Any reference to vessels includes a reference to hovercraft: see the Hovercraft Act 1968 s 3, Schedule (as

amended); and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 384. For the meaning of 'hovercraft' see PARA 611 note 2 ante.

4 Dockyard Ports Regulation Act 1865 s 5.

5 Ibid s 5.

6 Ibid s 5. As to dangerous substances in harbour areas see PARA 699 et seq post.

7 Ibid s 5. As to statutory provisions in respect of combustible matter see PARA 699 et seq post.

8 Ibid s 5.

9 Ibid s 5.

10 'Breaming' means burning tar, grease etc from a vessel's bottom, when in dry dock, or on a gridiron, slipway etc: Paasch's Dictionary of Naval Terms (4th Edn) 577.

11 Dockyard Ports Regulation Act 1865 s 5.

12 Ibid s 5. Nothing in the Dockyard Ports Regulation Act 1865 prejudices, takes away, abridges or alters any right of property, privilege or jurisdiction or any powers of conservancy held, possessed, enjoyed or exercised by any body or person in, to, upon or over any part of a dockyard port or its shores and banks: s 23.

13 Ibid s 6 (amended by the Statute Law (Repeals) Act 1993). For any offence, the penalty must not exceed level 3 on the standard scale or a lesser amount: Dockyard Ports Regulation Act 1865 s 6 (as so amended; and further amended by virtue of the Criminal Justice Act 1982 ss 40, 46). As to the standard scale see PARA 605 note 13 ante. Penalties, expenses and sums of money made recoverable by the Dockyard Ports Regulation Act 1865, or by any Order in Council under it, may be recovered by summary proceedings: s 17. The sums recovered, except when recovered by an owner from a master or other person, must be paid into Her Majesty's Exchequer in such a manner as the Treasury directs and must be carried to, and form part of, the Consolidated Fund of the United Kingdom: s 18 (amended by the Statute Law Revision Act 1893). 'Master' applied to a vessel means the person having the command or charge of the vessel for the time being: Dockyard Ports Regulation Act 1865 s 2. As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq. For the meaning of 'United Kingdom' see PARA 613 note 1 ante. If payment of any penalty, expenses or sum of money ordered by a magistrate to be paid by the master or owner of a vessel is not duly made, the magistrate, or any other magistrate having the same jurisdiction, may, in addition to any power of compelling payment, direct the unpaid amount to be levied by distress and sale of the vessel, its tackle, furniture and apparel, or any part of them: s 19. Summonses and other documents may be served by being left for the person to be served on board any vessel to which he belongs, with the person who is, or who appears to be, in command or charge of the vessel: s 20. For the purposes of jurisdiction, offences against the Dockyard Ports Regulation Act 1865 or any Order in Council under it are deemed to have been committed, and every cause of complaint deemed to have arisen, either where they were actually committed or wherever the offender or person complained against happens to be: s 21. For the purposes of the Dockyard Ports Regulation Act 1865, magistrates have jurisdiction over vessels and persons on board them passing near the shore abutting on their district: see s 22 (amended by the Courts Act 2003 s 109(1), Sch 8 para 49).

14 This provision as enacted referred to 'the Admiralty'. The functions conferred on the Admiralty by the Dockyard Ports Regulation Act 1865 have been transferred to the Secretary of State charged with general responsibility for defence; and references to the Admiralty have effect as references to the Secretary of State: see the Defence (Transfer of Functions) Act 1964 ss 1(1)(a), (2), 3(2), (6).

15 This provision as enacted refers to 'the Board of Trade'. These functions are now exercised by the Secretary of State for Trade and Industry: see the Ministry of Transport Act 1919 s 2(1) (repealed); the Transfer of Functions (Shipping and Construction of Ships) Order 1965, SI 1965/145, art 2, Sch 1; the Secretary of State for Trade and Industry Order 1970, SI 1970/1537, arts 2(1), 7(4); the Secretary of State (New Departments) Order 1974, SI 1974/692; and the Transfer of Functions (Trade and Industry) Order 1983, SI 1983/1127. As to the Department of Trade and Industry see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 505-508; COMPETITION vol 18 (2009) PARA 5.

16 Dockyard Ports Regulation Act 1865 s 7 (amended by virtue of the Defence (Transfer of Functions) Act 1964 ss 1(1)(a), (2), 3(2), (6); and the Statute Law (Repeals) Act 1986).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(2) HARBOUR MASTERS/690. Appointment of harbour masters and their powers to give directions.

(2) HARBOUR MASTERS

690. Appointment of harbour masters and their powers to give directions.

A harbour authority¹ may appoint such harbour masters² as it thinks necessary, and from time to time, as often as it thinks fit, may remove any such harbour master³.

The harbour master may give directions for all or any of the following purposes:

- 117 (1) regulating the time at which and the manner in which any vessel⁴ is to enter, go out of or lie in or at the harbour, dock or pier, and within the prescribed limits⁵, if any, and its position, mooring⁶ or unmooring, placing and removing whilst there⁷;
- 118 (2) regulating the position in which any vessel is to take in or discharge its cargo or any part of it, or to take in or land its passengers, or to take in or deliver ballast within or on the harbour, dock or pier⁸;
- 119 (3) regulating the manner in which any vessel entering the harbour or dock or coming to the pier is to be dismantled, for the safety of the vessel as well as for preventing injury to other vessels, and to the harbour, dock or pier and its moorings⁹;
- 120 (4) removing unserviceable vessels and other obstructions from the harbour, dock or pier and keeping it clear¹⁰;
- 121 (5) regulating the quantity of ballast or dead weight in the hold which each vessel in or at the harbour, dock or pier is to have during the delivery of its cargo, or after having discharged it¹¹.

The master¹² of every vessel within the harbour or dock, or at or near the pier, or within the prescribed limits, if any, must regulate the vessel according to the directions of the harbour master¹³; and any master of a vessel who, after notice of such a direction has been served on him, does not forthwith regulate the vessel in accordance with the direction is liable to a penalty¹⁴. Where an unsafe ship has been detained by an officer of the Marine Safety Agency the terms of the detention notice may require the ship to comply with its terms and this might affect the powers of the harbour master to give directions as mentioned above¹⁵.

Where an accident has occurred to or in a ship creating a risk to safety or a risk of pollution, the Secretary of State¹⁶ may give a direction to the harbour master requiring him to take certain steps with the aim of removing or reducing the risk¹⁷.

1 The Harbours, Docks and Piers Clauses Act 1847 refers to 'the undertakers', for the meaning of which see PARA 602 note 2 ante. In practice, the undertakers will always be a harbour authority within the meaning of the Harbours Act 1964: see PARA 619 ante.

2 'The harbour master' means: (1) with reference to any harbour, the harbour master; (2) with reference to any dock, the dock master; and (3) with reference to any pier, the pier master, each respectively appointed by virtue of the Harbours, Docks and Piers Clauses Act 1847 or the special Act; and with respect to all acts authorised or required to be done by such harbour master, dock master or pier master includes their assistants: s 2. For the meaning of 'harbour, dock or pier' see PARA 663 note 3 ante; and for the meaning of 'the special Act' see PARA 602 note 2 ante. As to the Queen's harbour master and his powers in relation to a dockyard port see PARA 693 post.

3 Ibid s 51. The provisions of the Harbours, Docks and Piers Clauses Act 1847 only apply where they are incorporated in local legislation: see PARA 602 ante.

4 For the meaning of 'vessel' see PARA 672 note 3 ante. For the purposes of ibid ss 52, 53 (see the text to notes 12-14 infra), references in whatever terms to ships, vessels or boats or activities or places connected with them are extended to include hovercraft or activities or places connected with hovercraft: Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 4, Sch 1 Pt A. See also the Hovercraft Act 1968 s 1. For the meaning of 'hovercraft' see PARA 611 note 2 ante.

5 'The prescribed limits', used with reference to the harbour, dock or pier, means the distance measured from the harbour, dock or pier, or other local limits, if any, beyond the harbour, dock or pier, within which the powers of the harbour master, dock master or pier master are authorised by the special Act to be exercised for the regulation of the harbour, dock or pier: Harbours, Docks and Piers Clauses Act 1847 s 2. In practice, local legislation which incorporates s 52 usually defines the area within which the harbour master exercises jurisdiction without reference to a measured distance from the harbour installations or the limits of the harbour.

6 Where the harbour master makes a direction as to the place where a vessel is to be moored under the Harbours, Docks and Piers Clauses Act 1847, he must exercise his discretion for the welfare of all the vessels which enter the harbour: *The Excelsior* (1868) LR 2 A & E 268. For the meaning of 'mooring' see *Evans v Godber* [1974] 3 All ER 341, [1974] 1 WLR 1317, DC.

7 Harbours, Docks and Piers Clauses Act 1847 s 52.

8 Ibid s 52.

9 Ibid s 52.

10 Ibid s 52.

11 Ibid s 52. Nothing in the Harbours, Docks and Piers Clauses Act 1847 or the special Act authorises the harbour master to do or cause to be done any act in any way repugnant to or inconsistent with the law relating to the Customs or any regulation of the Commissioners for Revenue and Customs: s 52 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). As to the Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

The directions contemplated by these provisions are ad hoc directions for particular occasions: see *The Guelder Rose* [1927] P 1, CA. A direction which attempts to enforce a general prohibition is ultra vires: *MacDonald v Mackenzie* 1947 JC 122. See also *Pearn v Sargent* [1973] 2 Lloyd's Rep 141. General directions may be made by byelaw under the Harbours, Docks and Piers Clauses Act 1847 s 83: see PARA 687 ante.

12 For the meaning of 'master' see PARA 673 note 10 ante.

13 If the directions of the harbour master made in conformity with the Harbours, Docks and Piers Clauses Act 1847 and the special Act: see s 53. The master must obey the directions of the harbour master even though, if his ship alone were considered, the order would be injudicious: *The Excelsior* (1868) LR 2 A & E 268; *Taylor v Burger* (1898) 8 Asp MLC 364, HL. As to the liability of the undertakers for the acts of the harbour master see *The Rhosina* (1885) 10 PD 131, CA. As to the liability of a harbour authority generally see PARA 745 et seq post.

14 Harbours, Docks and Piers Clauses Act 1847 s 53. The penalty must not exceed level 2 on the standard scale: s 53 (amended by virtue of the Criminal Justice Act 1982 s 46). At harbours of Associated British Ports (as to which see PARA 622 ante) the maximum penalty is level 3 on the standard scale: British Transport Docks Act 1981 ss 17, 20, Sch 1 (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 605 note 13 ante. As to the recovery of penalties see PARA 758 post. Where a ship is under arrest and in the custody of the Admiralty marshal, any attempt to interfere with the vessel is a contempt of court: see *The Harmonie* (1841) 1 Wm Rob 179; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 164. In case of conflict between the marshal and the harbour master as to the moving of the vessel, the harbour authority or the marshal may apply to the court for directions: see CPR Pt 61 (Admiralty claims); and SHIPPING AND MARITIME LAW.

15 See the Merchant Shipping Act 1995 ss 95, 284 (as amended); and SHIPPING AND MARITIME LAW vol 94 (2008) PARAS 1204, 1253. See also *Ullapool Harbour Trustees v Secretary of State for Transport* 1995 GWD 11-627, (1995) Times, 13 April (OH).

16 As to the Secretary of State see PARA 603 ante.

17 See the Merchant Shipping Act 1995 s 108A, Sch 3A (as added); and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 686. As to pollution see PARA 710 post.

UPDATE

690-691 Appointment of harbour masters and their powers to give directions, Other powers of harbour masters as to vessels

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(2) HARBOUR MASTERS/691. Other powers of harbour masters as to vessels.

691. Other powers of harbour masters as to vessels.

If the master¹ of any vessel² in or at the harbour, dock or pier³ or within the prescribed limits⁴, if any, does not moor, unmoor, place or remove the vessel according to the directions of the harbour master⁵, or if there is no person on board the vessel⁶ to attend to such directions, the harbour master may cause the vessel to be moored, unmoored, placed or removed as he thinks fit within or at the harbour, dock or pier or within the prescribed limits⁷. For that purpose he may cast off, unloose or cut the rope, or unshackle or break the chain by which any such vessel is moored or fastened⁸. All expenses relating to the mooring, unmooring, placing or removing of the vessel are to be paid to the harbour authority⁹ by the master of the vessel¹⁰.

Whenever the harbour authority thinks it necessary, for the purpose of repairing, scouring or cleansing the harbour, dock or pier, that any vessel lying there should be removed, the harbour master must give notice in writing¹¹ to the master of the vessel and the master must remove the vessel within three days after such notice is given¹². If the master cannot be found, or if he neglects or refuses to move it, the harbour master may remove the vessel to a station selected by him and the owner or master of the vessel must pay to the harbour authority the expenses of removal¹³.

There is a statutory prohibition on permitting vessels which are laid by or neglected as unfit for sea service to lie within the limits of the harbour, dock or pier¹⁴. The harbour master may cause any such vessel to be removed from the harbour, dock or pier and laid on any part of the strand or seashore or in any other place where it may be placed without injury to any person, at the expense of the owner¹⁵. The charges for removing or placing the vessel are recoverable summarily before any justice of the peace¹⁶. If the owner refuses or neglects to pay the charges for seven days after they have been awarded, the harbour master may levy them by distress and sale of the whole or part of the vessel, or its tackle, apparel or furniture¹⁷.

The harbour master may remove any wreck or other obstruction to the harbour, dock or pier or its approaches, and any floating timber which impedes navigation there¹⁸. The expenses of removing it¹⁹ must be repaid by its owner²⁰. The harbour master may detain the wreck or floating timber as security for the expenses²¹. On non-payment of the expenses on demand, he may sell the wreck or floating timber and pay the expenses out of the proceeds of sale, rendering any surplus to the owner on demand²².

The harbour master has various other functions relating to vessels, including receiving notice of their arrival, and giving directions as to dismantling and notices as to hawsers and towlines²³. He may give permission to vessels to moor in the harbour entrance and give orders for their removal, and he has functions in relation to discharged vessels²⁴. He also has important powers as respects dangerous vessels²⁵ and pollution²⁶.

- 1 For the meaning of 'master' see PARA 673 note 10 ante.
- 2 For the meaning of 'vessel' see PARA 672 note 3 ante.
- 3 For the meaning of 'harbour, dock or pier' see PARA 663 note 3 ante.
- 4 For the meaning of 'the prescribed limits' see PARA 690 note 5 ante.
- 5 For the meaning of 'the harbour master' see PARA 690 note 2 ante. As to the power of the harbour master to give directions see PARA 690 ante.
- 6 The master is under an obligation to keep a sufficient crew on board to protect his ship against ordinary perils: *The Excelsior* (1868) LR 2 A & E 268. See also *The Theodoros*, *The Blidensol* [1923] P 26.
- 7 Harbours, Docks and Piers Clauses Act 1847 s 58. The provisions of the Harbours, Docks and Piers Clauses Act 1847 only apply where they are incorporated in local legislation: see PARA 602 ante. The harbour master must use due care to ensure that the place where the vessel is to lie is a safe one: *The Rhosina* (1885) 10 PD 24 (affd (1885) 10 PD 131, CA); *The Apollo* [1891] AC 499, HL. When a harbour master or his assistants remove a vessel, he must see that it is properly removed: *East London Harbour Board v Caledonia Landing, Shipping and Salvage Co Ltd*, *East London Harbour Board v Colonial Fisheries Co Ltd* [1908] AC 271, PC. As to the liability of a harbour authority for negligence see PARA 745 post. As to the right of a harbour authority to limit its liability see PARA 749 post. As to the mooring of vessels in the harbour entrance see PARA 695 post. As to the power to make byelaws as to vessels in the harbour see PARA 687 ante.
- 8 Harbours, Docks and Piers Clauses Act 1847 s 58. Before the harbour master unlooses or cuts any rope, or unshackles or breaks any chain, by which any vessel without any person on board to protect it is moored or fastened, he must cause a sufficient number of persons to be put on board the vessel to protect it: s 58.
- 9 The Harbours, Docks and Piers Clauses Act 1847 refers to 'the undertakers', for the meaning of which see PARA 602 note 2 ante. In practice, the undertakers will always be a harbour authority within the meaning of the Harbours Act 1964: see PARA 619 ante.
- 10 Harbours, Docks and Piers Clauses Act 1847 s 58. As to the recovery of these expenses see PARA 758 post.
- 11 For the meaning of 'writing' see PARA 605 note 3 ante.
- 12 Harbours, Docks and Piers Clauses Act 1847 s 64. If the master neglects to remove the vessel in accordance with the notice then he is liable to a penalty not exceeding level 1 on the standard scale: s 64 (amended by virtue of the Criminal Justice Act 1982 s 46). At harbours of Associated British Ports (as to which see PARA 622 ante) the maximum penalty is level 3 on the standard scale: British Transport Docks Act 1981 ss 17, 20, Sch 1 (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 605 note 13 ante. As to the recovery of penalties see PARA 758 post.
- 13 Harbours, Docks and Piers Clauses Act 1847 s 65. As to the recovery of these expenses see PARA 758 post. Before repairing the harbour, dock or pier, the harbour master must give three days' notice of the repair and of the necessity for the removal of the vessel to an officer of Revenue and Customs of the district within which the harbour, dock or pier is situated, or which is specified for that purpose in the special Act, and must cause a similar notice to be fixed on a conspicuous part of the customs house and of the harbour authority's office: s 65 (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). For the meaning of 'the special Act' see PARA 602 note 2 ante. As to Her Majesty's Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.
- 14 See the Harbours, Docks and Piers Clauses Act 1847 s 57. This prohibition and s 56 (see the text and notes 18-22 infra) apply also to aircraft and hovercraft and their wrecks: see the Civil Aviation Act 1982 s 87(4); the Aircraft (Wreck and Salvage) Order 1938, SR & O 1938/136 (amended by SI 1964/489); and the Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 8(2)(a). For the meaning of 'hovercraft' see PARA 611 note 2 ante. As to the application of the law of wreck and salvage to aircraft see AIR LAW vol 2 (2008) PARA 599.
- 15 Harbours, Docks and Piers Clauses Act 1847 s 57. In disposing of a vessel after removing it from the harbour the harbour master is not entitled to destroy it and after the harbour master has removed the vessel from the harbour and laid it on the shore the control and possession of the vessel reverts to the owner: *Peterhead Harbour Trustees v Chalmers (The Clupea)* 1984 SLT 130n, Ct of Sess.
- 16 Harbours, Docks and Piers Clauses Act 1847 s 57. The High Court has no jurisdiction to award these expenses: *Barraclough v Brown* [1897] AC 615, HL. As to justices of the peace see MAGISTRATES vol 29(2) (Reissue) PARA 501 et seq.

17 Harbours, Docks and Piers Clauses Act 1847 s 57.

18 Ibid s 56. As to the application of this provision to aircraft and hovercraft see note 14 supra. The power is to remove the wreck, not to destroy it: *The Crystal* [1894] AC 508 at 531, HL, per Lord Macnaghten. As to the power to remove wrecks under the Merchant Shipping Act 1995 s 252 see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1008.

19 All the expenses due to the presence of the wreck in the navigable channel are recoverable: see *The Ella* [1915] P 111 at 116, 121-122; *Clyde Navigation Trustees v Kelvin Shipping Co Ltd* 1927 SC 622, Ct of Sess; *The Solway Prince* (1914) 31 TLR 56, where the costs of tugs to assist vessels past a wreck were allowed. The expenses claimed must be reasonable, although the harbour authority may take into account repairs, depreciation and insurance in respect of the plant used for the relevant period in raising the wreck and interest on the capital invested in that plant: *The Harrington* (1888) 13 PD 48. See also *The Greta Holme* [1897] AC 596, HL; *The Marpessa* [1907] AC 241, HL. An insurance policy to cover claims 'in relation to the removal of the wreck' covers claims arising on non-removal owing to breach of contract: *Oceanic Steam Navigation Co Ltd v Evans* (1934) 51 TLR 67, CA.

20 Harbours, Docks and Piers Clauses Act 1847 s 56. In the case of a wrecked vessel, the owner who must repay the expenses of removal is the owner at the time of removal: *The Crystal* [1894] AC 508, HL. Where the wrecked vessel is a hovercraft, the expenses must be repaid by the person who was the owner at the time of wrecking: see the Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 8(2)(b). Where an obstruction is caused by negligence for which the owner is liable at common law, abandonment of the wreck will not avoid liability: *Dee Conservancy Board v McConnell* [1928] 2 KB 159, CA. As to the effect of powers to remove wrecks under the special Act see *Jones v Mersey Docks and Harbour Board* (1913) 12 Asp MLC 335. See also *The Wallsend* [1907] P 302 (under the Thames Conservancy Act 1894, owners were liable whether the wreck was abandoned or not); *Wilson v Cator* (1863) 7 LT 676 (owner's executors were not liable, as the special Act made the expenses a penalty); *Sheppy Glue and Chemical Works Ltd v Medway (River) Conservators* (1926) 24 LGR 457 (under the Medway Conservancy Act 1881, the owners were not liable after abandonment); *William Howard Smith & Sons Ltd v Wilson* [1896] AC 579, PC (owners liable after abandonment under an Australian Act). Power under the special Act to recover expenses of removal from the owner does not enable the authority to recover the expenses from the owner of the cargo: *Vivian v Mersey Docks and Harbour Board* (1869) LR 5 CP 19. The harbour authority may claim the expenses of removal, less the value of the wreck, against the owner of a ship whose negligence caused the wreck, without relying on the statutory rights: *The Liverpool (No 2)* [1963] P 64, [1960] 3 All ER 307, CA. See also *The Ella* [1915] P 111. However, where a harbour authority is under a duty to exercise its statutory powers of removal, it is not entitled to recover salvage: *The Gregerso* [1973] QB 274, [1971] 1 All ER 961. Where the obstruction was due to the negligence of the harbour authority, the authority may not recover its expenses: *Greenock Port and Harbour Trustees v British Oil and Cake Mills Ltd* 1944 SC 70, Ct of Sess.

21 Harbours, Docks and Piers Clauses Act 1847 s 56.

22 Ibid s 56.

23 See PARA 695 post.

24 See PARA 695 post.

25 See PARA 698 post.

26 See PARA 710 post.

UPDATE

690-691 Appointment of harbour masters and their powers to give directions, Other powers of harbour masters as to vessels

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(2) HARBOUR MASTERS/692. Powers of harbour masters as to goods, substances etc.

692. Powers of harbour masters as to goods, substances etc.

The harbour master¹ has important powers as respects dangerous substances². He has power to remove and sell goods left on harbour premises³. He has a duty to guard combustible substances, and may give notice to remove them⁴. He may also give permission for fires on vessels and has powers of enforcement relating to them⁵.

1 For the meaning of 'the harbour master' see PARA 690 note 2 ante. As to the harbour master and his appointment see PARA 690 ante. As to the powers of the harbour master in relation to vessels see PARA 691 ante.

2 He is under the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37 (as amended); see PARA 700 et seq post.

3 See PARA 695 post.

4 See the Harbours, Docks and Piers Clauses Act 1847 s 69 (as amended); and PARA 699 post. The provisions of the Harbours, Docks and Piers Clauses Act 1847 only apply where they are incorporated in local legislation: see PARA 602 ante.

5 See ibid ss 71, 72 (both as amended); and PARA 699 post.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(2) HARBOUR MASTERS/693. Appointment and powers of Queen's harbour masters.

693. Appointment and powers of Queen's harbour masters.

The Secretary of State¹ may from time to time appoint for each dockyard port² a fit person to superintend the execution of the Dockyard Ports Regulation Act 1865, and otherwise to protect the port³. Such a person is called the Queen's harbour master for the port in question⁴.

If the master⁵ of any vessel⁶ within a dockyard port does not moor, anchor, place, unmoor or remove the vessel according to directions given by the Queen's harbour master⁷, or if there is no person on board any such vessel to attend to the directions, the Queen's harbour master may cause the vessel to be moored, anchored, placed, unmoored or removed⁸. For that purpose he may cast off, loose or unshackle and, if necessary, sever any chain or rope of the vessel; however, he must first put on board a sufficient number of persons for the protection of the vessel in case there are not enough persons on board to protect it⁹. All expenses¹⁰ must be paid by the master of the vessel¹¹.

No vessel laid by or neglected as unfit for sea service may lie within any specified part¹² of a dockyard port¹³. The Queen's harbour master may cause every such vessel to be removed and be laid on a part of the strand or seashore or in some other place where it may be placed without injury to any person¹⁴. The Queen's harbour master may also remove any wreck or other obstruction to the dockyard port or its approaches and any floating timber that impedes its navigation¹⁵. The expenses of removal must be repaid by the owner¹⁶. The Queen's harbour master may detain the wreck, obstruction, timber or vessel and, if the expenses are not paid on demand, sell it and pay the expenses of removal or placing, and the expenses of sale, out of the proceeds, and must pay any surplus to the owner on demand, and any deficiency may be recovered from the owner¹⁷.

The Queen's harbour master also has power to enter vessels in dockyard ports, and search for gunpowder, guns, fire and combustible substances¹⁸.

1 This provision as enacted refers to 'the Admiralty'. As to the devolution of the dockyard ports functions of the Admiralty to the Secretary of State see PARA 689 note 14 ante.

2 For the meaning of 'dockyard port' see PARA 613 ante.

3 Dockyard Ports Regulation Act 1865 s 4 (amended by virtue of the Defence (Transfer of Functions) Act 1964 ss 1(1)(a), (2), 3(2), (6)).

4 Dockyard Ports Regulation Act 1865 s 4.

5 For the meaning of 'master' see PARA 689 note 13 ante.

6 For the meaning of 'vessel' see PARA 689 note 3 ante.

7 The directions given by the Queen's harbour master in conformity with any Order in Council under the Dockyard Ports Regulation Act 1865. As to such orders see PARA 689 ante.

8 Ibid s 11. As to similar powers on the part of harbour masters at other harbours see PARA 691 ante.

9 Ibid s 11.

10 The expenses of exercising the powers conferred by ibid s 11.

11 Ibid s 11.

12 The any part specified in any Order in Council under the Dockyard Ports Regulation Act 1865.

13 Ibid s 14.

14 Ibid s 14. Section 14, together with ss 13, 15 (see the text to notes 15-17 supra), is applied to aircraft: see the Civil Aviation Act 1982 s 87; the Aircraft (Wreck and Salvage) Order 1938, SR & O 1938/136 (as amended); and AIR LAW vol 2 (2008) PARA 599.

15 Dockyard Ports Regulation Act 1865 s 13. There is a statutory defence available to the Queen's harbour master against a charge of discharging oil into United Kingdom waters, in cases where oil pollution occurs in consequence of the exercise of powers under s 13: see the Merchant Shipping Act 1995 s 134(2); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 428. For the meaning of 'United Kingdom' see PARA 613 note 1 ante. See note 14 supra.

16 Dockyard Ports Regulation Act 1865 s 15. See note 14 supra. Where the owner of any vessel or thing is compelled to pay any penalty, sum of money or costs by reason of any act or omission of the master of a vessel or other person, he is entitled to recover the amount paid by him, with costs, from the person who did the wrongful act in question: s 16.

17 Ibid s 15. See note 14 supra.

18 See PARA 699 post.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(2) HARBOUR MASTERS/694. Wrongful exercise of powers of harbour masters.

694. Wrongful exercise of powers of harbour masters.

If a harbour master¹, or any of his assistants, exercises any of his statutory powers or authorities² without reasonable cause or in an unreasonable or unfair manner, he is guilty of an offence³. If any person gives or offers any sum of money or anything whatsoever by way of reward or bribe to any harbour master or officer employed in or about the harbour, dock or

pier⁴, for the purpose of gaining an undue preference in the execution of his office or inducing the harbour master or officer to do or omit to do anything relating to his office, or if the harbour master or officer receives any such reward or bribe, the offender is liable to a penalty⁵.

1 For the meaning of 'the harbour master' see PARA 690 note 2 ante. As to the appointment of a harbour master see PARA 690 ante.

2 le the powers or authorities of the harbour master under the Harbours, Docks and Piers Clauses Act 1847 or the special Act. The provisions of the Harbours, Docks and Piers Clauses Act 1847 only apply where they are incorporated in local legislation: see PARA 602 ante. For the meaning of 'the special Act' see PARA 602 note 2 ante. As to the powers of the harbour master see PARAS 690-692 ante.

3 Ibid s 54. A person who is guilty of such an offence is liable to a penalty not exceeding level 1 on the standard scale: s 54 (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 605 note 13 ante. As to the recovery of penalties see PARA 758 post. As to the civil consequences of the ultra vires exercise of the powers of a harbour master see *MacDonald v Mackenzie* 1947 JC 122. If the harbour master acts negligently, he may render the harbour authority liable for any damage that results: *Reney v Kirkcudbright Magistrates* [1892] AC 264, HL; *The Rhosina* (1884) 10 PD 24 (affd (1885) 10 PD 131, CA); *The Bearn* [1906] P 48, CA. As to the liability of harbour authorities for negligence see PARA 745 post; as to their liability for acts and orders of employees (including harbour masters) see PARA 747 post; and as to their right to limit their liability see PARA 749 post.

4 For the meaning of 'harbour, dock or pier' see PARA 663 note 3 ante.

5 Harbours, Docks and Piers Clauses Act 1847 s 55. A person guilty of such an offence is liable for every such offence to a penalty of level 2 on the standard scale: s 55 (amended by virtue of the Criminal Justice Act 1982 s 46). In the case of harbours belonging to Associated British Ports (as to which see PARA 622 ante) the maximum penalty is level 3 on the standard scale: British Transport Docks Act 1981 ss 17, 20, Sch 1 (amended by virtue of the Criminal Justice Act 1982 s 46).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(3) DUTIES OF MASTERS AND OTHERS WITHIN HARBOURS/695. Duties of masters and others.

(3) DUTIES OF MASTERS AND OTHERS WITHIN HARBOURS

695. Duties of masters and others.

The duty of the master¹ of a vessel² liable to rates to report his arrival to the harbour master³ is mentioned elsewhere in this title⁴. There are statutory provisions⁵ requiring vessels to be dismantled on entering the harbour or dock or approaching the pier⁶ as directed by the harbour master⁷, and requiring them to lower or furl their sails⁸, with penalties for default⁹.

Every vessel in the harbour or dock, or at or near the pier, must have substantial hawsers, towlines and fasts fixed to the dolphins, booms, buoys or mooring posts when required by the harbour master¹⁰. If any vessel is in the harbour or dock, or at or near the pier, without substantial hawsers, towlines or fasts duly fixed, after the harbour master has given notice to the master to furnish or fix them, the master is guilty of an offence¹¹. Every person other than the harbour master who wilfully cuts, breaks or destroys the mooring or fastening of any vessel lying in the harbour or dock, or at or near the pier, is guilty of an offence¹².

No vessel may lie or be moored in the entrance of the harbour or dock or within the prescribed limits¹³, except with the permission of the harbour master¹⁴. If the master of any vessel places it or allows it to remain in the entrance of the harbour or dock or within the prescribed limits without such permission and does not immediately remove it on being required to do so by the harbour master, the master is liable to a penalty¹⁵. After a reasonable time for removing it has expired he is liable to a further penalty if it remains within the limits¹⁶.

The duty of masters to give notice of unshipment and particulars of the cargo to be unshipped is mentioned elsewhere in this title¹⁷. The master of every vessel which goes into the harbour or dock for the purpose of being discharged of its cargo must cause it to be discharged as soon as convenient after entering¹⁸. He must also cause it to be removed, without loss of time, after discharging, into the part of the harbour or dock set apart for light vessels, and the harbour master has a duty to set apart an area for light vessels accordingly¹⁹. If the master does not cause the vessel to be removed to this area within 24 hours after being required to do so by notice in writing²⁰ signed by the harbour master, he is liable to a penalty²¹ and the harbour master may cause the vessel to be removed and the expenses of removal must be repaid to the harbour authority²² by the master²³.

If any wharfinger or other servant of the harbour authority, or any of its lessees, or the servants of the lessees, gives any undue preference or shows any partiality in loading or unloading any goods²⁴ on any of the quays, wharfs or other works belonging to the authority, the offender is liable to a penalty²⁵. No goods may be allowed to remain on any of the piers or quays, or their approaches, for longer than the time allowed by the byelaws of the harbour authority²⁶. If any goods remain in breach of this prohibition without the harbour authority's consent, the harbour master or any person appointed by the authority for the purpose may remove the goods to any of its premises, or any other convenient place, and keep them until the authority is paid the expenses of removal and storage²⁷. If the expenses are not paid within seven days after they have been demanded from the owner²⁸, or if no owner can be found, the harbour master may sell the goods and pay the expenses out of the proceeds of sale, paying any surplus to the owner on demand²⁹.

Masters and others also have duties as respects dangerous vessels³⁰, dangerous substances³¹, and pollution³².

1 For the meaning of 'master' see PARA 673 note 10 ante.

2 For the meaning of 'vessel' see PARA 672 note 3 ante.

3 For the meaning of 'the harbour master' see PARA 690 note 2 ante. As to the harbour master and his powers see PARA 690 et seq ante.

4 See PARA 675 ante. As to the duty to comply with byelaws see PARA 687 ante. As to the duty to comply with public health regulations see the Public Health (Ships) Regulations 1979, SI 1979/1435; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 933.

5 These provisions are contained in the Harbours, Docks and Piers Clauses Act 1847, the provisions of which only apply where they are incorporated in local legislation: see PARA 602 ante.

6 For the meaning of 'harbour, dock or pier' see PARA 663 note 3 ante.

7 See the Harbours, Docks and Piers Clauses Act 1847 s 59.

8 See *ibid* s 60.

9 If any vessel enters the harbour or dock or approaches the pier without being dismantled in the manner required by the harbour master, after notice has been given to the master of the vessel to dismantle it, the master is guilty of an offence and liable for each offence to a penalty not exceeding level 1 on the standard scale: *ibid* s 59 (amended by virtue of the Criminal Justice Act 1982 s 46). At harbours of Associated British Ports (as to which see PARA 622 ante) the maximum penalty is level 3 on the standard scale: British Transport Docks Act 1981 ss 17, 20, Sch 1 (amended by virtue of the Criminal Justice Act 1982 s 46). If the master of any vessel navigates it under sail into or in the dock, he is guilty of an offence and liable for each offence to a penalty not exceeding level 1 on the standard scale: Harbours, Docks and Piers Clauses Act 1847 s 60 (amended by virtue of the Criminal Justice Act 1982 s 46). At harbours of Associated British Ports the maximum penalty is level 3 on the standard scale: British Transport Docks Act 1981 ss 17, 20, Sch 1 (as so amended). As to the standard scale see PARA 605 note 13 ante. As to the recovery of penalties see PARA 758 post.

10 Harbours, Docks and Piers Clauses Act 1847 s 61. A vessel moored in a dock with ropes out to the opposite side of the dock obstructing the waterway owes a duty at tide time, when other vessels may be

entering or leaving, to have an efficient lookout, so that if necessary the ropes can be slacked away immediately: *The Theodoros, The Blidensol* [1923] P 26.

11 Harbours, Docks and Piers Clauses Act 1847 s 61. A master who is guilty of such an offence is liable for every such offence to a penalty not exceeding level 1 on the standard scale: s 61 (amended by virtue of the Criminal Justice Act 1982 s 46). At harbours of Associated British Ports the maximum penalty is level 3 on the standard scale: British Transport Docks Act 1981 ss 17, 20, Sch 1 (as amended: see note 9 supra).

12 Harbours, Docks and Piers Clauses Act 1847 s 62. A person guilty of such an offence is liable for every such offence to a penalty not exceeding level 1 on the standard scale: s 62 (amended by virtue of the Criminal Justice Act 1982 s 46). At harbours of Associated British Ports the maximum penalty is level 3 on the standard scale: British Transport Docks Act 1981 ss 17, 20, Sch 1 (as amended: see note 9 supra).

13 For the meaning of 'the prescribed limits' see PARA 690 note 5 ante.

14 Harbours, Docks and Piers Clauses Act 1847 s 63. This provision is expressed to apply as soon as the harbour or dock is so far completed as to admit vessels to enter it. Section 63 overrides and extinguishes all local and private rights of mooring: *Gardner v Whitford* (1858) 4 CBNS 665. The lead rope must be fastened to the shore and not to the lead rope of another vessel: see *The Atlas* (1846) 7 LT 286. As to the duty of the master to moor his vessel in accordance with the directions of the harbour master see PARA 691 ante. As to the power of harbour authorities to make byelaws regulating the admission of vessels see PARA 687 ante.

15 Harbours, Docks and Piers Clauses Act 1847 s 63. The penalty must not exceed level 1 on the standard scale: s 63 (amended by virtue of the Criminal Justice Act 1982 s 46). At harbours of Associated British Ports the maximum penalty is level 3 on the standard scale: British Transport Docks Act 1981 ss 17, 20, Sch 1 (as amended: see note 9 supra). The harbour master has a duty to appoint a place and method of mooring vessels: *East London Harbour Board v Caledonia Landing, Shipping and Salvage Co Ltd, East London Harbour Board v Colonial Fisheries Co Ltd* [1908] AC 271, PC.

16 See the Harbours, Docks and Piers Clauses Act 1847 s 63 (amended by the Decimal Currency Act 1969 s 10(1)). The penalty is a further sum of £1 for every hour that such vessel remains within the limits: Harbours, Docks and Piers Clauses Act 1847 s 63 (as so amended). At harbours of Associated British Ports the further sum is £20 for every such hour: British Transport Docks Act 1981 ss 17, 20, Sch 1 (as amended: see note 9 supra).

17 See PARA 675 ante.

18 Harbours, Docks and Piers Clauses Act 1847 s 66. As to customs of the port relating to discharge of cargoes see CUSTOM AND USAGE vol 12(1) (Reissue) PARA 692. As to the unloading of dangerous substances see the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37 (as amended); and PARA 700 et seq post.

19 Harbours, Docks and Piers Clauses Act 1847 s 66.

20 For the meaning of 'writing' see PARA 605 note 3 ante.

21 The penalty must not exceed level 1 on the standard scale: Harbours, Docks and Piers Clauses Act 1847 s 66 (amended by virtue of the Criminal Justice Act 1982 s 46). At harbours of Associated British Ports the maximum penalty is level 3 on the standard scale: British Transport Docks Act 1981 ss 17, 20, Sch 1 (as amended: see note 9 supra).

22 The Harbours, Docks and Piers Clauses Act 1847 refers to 'the undertakers', for the meaning of which see PARA 602 note 2 ante. In practice, the undertakers will always be a harbour authority within the meaning of the Harbours Act 1964: see PARA 619 ante.

23 Harbours, Docks and Piers Clauses Act 1847 s 66.

24 For the meaning of 'goods' see PARA 663 note 2 ante.

25 Harbours, Docks and Piers Clauses Act 1847 s 67. The penalty must not exceed level 1 on the standard scale: s 67 (amended by virtue of the Criminal Justice Act 1982 s 46).

26 Harbours, Docks and Piers Clauses Act 1847 s 68. As to the power to make byelaws see PARA 687 ante.

27 Ibid s 68.

28 For the meaning of 'owner' see PARA 673 note 11 ante.

29 Harbours, Docks and Piers Clauses Act 1847 s 68.

30 See PARA 698 post.

31 See PARA 699 et seq post.

32 See PARA 710 post.

UPDATE

695 Duties of masters and others

NOTE 4--SI 1979/1435 amended, in relation to England, by SI 2007/1446, and, in relation to Wales, by SI 2007/1901.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/ (4) CONSERVANCY, SAFETY AND POLLUTION/(i) Harbour Conservancy/696. Harbour conservancy.

(4) CONSERVANCY, SAFETY AND POLLUTION

(i) Harbour Conservancy

696. Harbour conservancy.

By the prerogative the Crown had the conservancy of all ports and harbours, and was entrusted with the protection of the public rights in such places¹. The grantee of a port took it subject to the same obligations². However, the conservancy of ports is now largely regulated by statutory provisions³. It is the duty of a harbour authority⁴ with jurisdiction over a water area to take reasonable care, so long as the authority keeps the navigable highway open for the public use of all who choose to navigate it, that they may do so without danger to their lives or property⁵. Every owner of a port is bound to conserve it so that it is reasonably fit for use as a port⁶. To carry out this duty it will often be necessary for a harbour authority to dredge its harbour⁷. Some harbour authorities have specific power to dredge in their local legislation⁸ and others rely on general powers in their local legislation to maintain and improve the harbour in question⁹. A harbour authority is a local lighthouse authority as respects the area or areas inside the limits within which the authority's statutory powers as a harbour authority are exercisable¹⁰.

A harbour authority¹¹ has power to remove wrecks and certain related powers¹².

Common law nuisances with respect to ports give rise to the same remedies as highway nuisances¹³.

1 Hale, de Portibus Maris, c 7; Hale, de Jure Maris, c 5; Hargrave, Law Tracts 23, 87. As to the royal prerogative see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 367 et seq; CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 46.

2 *A-G v Tomline* (1880) 14 Ch D 58, CA; *A-G v Wright* [1897] 2 QB 318 at 324, CA.

3 See the text and notes 8-12 infra.

4 For the meaning of 'harbour authority' see PARA 619 ante.

5 *The Neptun (Owners) v Humber Conservancy Board* [1938] P 21, (1937) 59 Ll L Rep 158. In his judgment in this case Langton J, referring to the harbour authority's duty towards a user of the harbour, said that this duty

'cannot be stated exactly as being a relation of invitor and invitee since it is difficult to imagine the Board extending to the public an invitation to use the highway which *ex concessi* is already their legal right. Nevertheless the common law duty is the same as that owed by an invitor to an invitee, and it is not necessary to invent any particular term to indicate the relationship between a public custodian and an individual who pays for the use and the work performed by the custodian'. Langton J in his judgment also outlined briefly the scope of the obligations of a buoyage and beaconage authority.

6 *Mersey Docks and Harbour Board Trustees v Gibbs* (1866) LR 1 HL 93. See also *Jan de Nul (UK) Ltd v AXA Royale Belge SA (formerly NV Royale Belge)* [2002] EWCA Civ 209, [2002] 1 All ER (Comm) 767, [2002] 1 Lloyd's Rep 583.

7 See *St Just Steamship Co Ltd v Hartlepool Port and Harbour Comrs* (1929) 34 Ll L Rep 344; *The Tramontana II (Owners) v Ministry of Defence and Martin* [1969] 2 Lloyd's Rep 94. As to the liabilities of harbour authorities generally and liability for the depth of approaches see PARAS 745-746 post.

8 See eg the Port of London Act 1968 s 60; and WATER AND WATERWAYS vol 101 (2009) PARA 712.

9 As to the creation or establishment of harbour authorities see PARA 620 ante.

10 See the Merchant Shipping Act 1995 s 193(2)(a) (as amended); and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1068. A body other than a harbour authority which existed as a local lighthouse authority for the purposes of the Merchant Shipping Act 1894 immediately before the repeal of that Act by the Merchant Shipping Act 1995 is also a local lighthouse authority as respects the area over which its authority extends in relation to lighthouses, buoys and beacons: see s 193(2)(b). As to the duties of a local lighthouse authority in relation to lighthouses, buoys and beacons and its control by Trinity House see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1068 et seq.

11 For the meaning of 'harbour authority' in this context see PARA 619 ante.

12 See the Merchant Shipping Act 1995 s 252; and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1008. In relation to wrecks it is wider than the powers of a harbour master to remove wrecks and obstructions (as to which see PARA 691 ante). Section 252 is often extended and supplemented by a harbour authority's local legislation. The local legislation of a few harbour authorities contains wreck removal powers in a different form: see eg the Port of London Act 1968 s 120 (amended by the Port of London Authority Harbour Revision Order 2003, SI 2003/2556, art 7(2)).

13 See Hale, de Portibus Maris, c 7; Hargrave Law Tracts 85, 87, 88. See further HIGHWAYS, STREETS AND BRIDGES; NUISANCE.

UPDATE

696 Harbour conservancy

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/ (4) CONSERVANCY, SAFETY AND POLLUTION/(i) Harbour Conservancy/697. Aids to safety in navigation.

697. Aids to safety in navigation.

There is a statutory duty on a harbour authority¹ to lay down buoys for the guidance of vessels² in the situations within the limits of the harbour, dock or pier³ and of the type directed by the Corporation of Trinity House of Deptford Strond⁴. The harbour authority may not erect any lighthouse or beacon or exhibit or allow to be exhibited any light, beacon or sea-mark without the prior sanction in writing⁵ of Trinity House⁶. Any permitted light, beacon or sea-mark which is

exhibited must not be altered without the same consent⁷; and it must be of such power and description, and be discontinued or altered, as Trinity House directs⁸.

Unless exempted by the special Act⁹, before being entitled to take any rates¹⁰ in respect of the harbour, dock or pier, the harbour authority must provide and always afterwards maintain in good repair an efficient and well appointed lifeboat and rocket apparatus approved by the Secretary of State¹¹, with all necessary tackle for the assistance and succour of vessels in distress¹². A competent crew and proper personnel for their effectual working must also be provided and maintained¹³. The lifeboat and apparatus must be stationed at or upon the most advanced works of the harbour, dock or pier, or another place approved by the Secretary of State, and must be used on all necessary occasions¹⁴.

Unless exempted by the special Act, before being entitled to take any rates in respect of the harbour, dock or pier, the harbour authority must provide and maintain in good repair and working order an efficient self-registering tide gauge and barometer and keep a daily record of their working and results and a daily account of the wind and weather¹⁵. The account of the daily working of the tide gauge and barometer and the daily state of the wind and weather must be sent each month to the Secretary of State¹⁶.

1 The Harbours, Docks and Piers Clauses Act 1847 refers to 'the undertakers', for the meaning of which see PARA 602 note 2 ante. In practice, the undertakers will always be a harbour authority within the meaning of the Harbours Act 1964: see PARA 619 ante.

2 For the meaning of 'vessel' see PARA 672 note 3 ante.

3 For the meaning of 'harbour, dock or pier' see PARA 663 note 3 ante.

4 Harbours, Docks and Piers Clauses Act 1847 s 77. The provisions of the Harbours, Docks and Piers Clauses Act 1847 only apply when incorporated in local legislation: see PARA 602 ante. In practice, s 77 is never incorporated in modern local legislation, and is therefore of little practical importance. As to navigation aids see rather the Merchant Shipping Act 1995; and SHIPPING AND MARITIME LAW. As to the Corporation of Trinity House of Deptford Strond see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1069.

As to the duty of a harbour authority to buoy wrecks see *Anchor Line (Henderson Bros) Ltd v Dundee Harbour Trustees* (1922) 38 TLR 299, HL. The trustees of a natural harbour are under no common law obligation to buoy the navigable channel, but if they do so they must use reasonable care to ensure that the buoys are kept in position: *Dampskibet Forto Akt v Orkney Harbour Comrs* 1915 SC 743, Ct of Sess; cf *Scrutton Sons & Co v A-G for Trinidad* (1920) 15 Asp MLC 133, PC (buoys marking approach to dock); *The Neptun* [1938] P 21 (duties of buoyage and beaconage authorities defined); *The Enid* (1950) 83 Ll L Rep 344 (failure to burn certain lights in approach channel); *Workington Harbour and Dock Board v The Towerfield (Owners)* [1951] AC 112, [1950] 2 All ER 414, HL (failure to maintain width and depth of advertised channel).

5 For the meaning of 'writing' see PARA 605 note 3 ante.

6 Harbours, Docks and Piers Clauses Act 1847 s 78. In practice, s 78 is never incorporated in modern local legislation, and is therefore of little practical importance. As to navigation aids see rather the Merchant Shipping Act 1995; and SHIPPING AND MARITIME LAW. See also the cases cited in note 4 supra.

7 Harbours, Docks and Piers Clauses Act 1847 s 78.

8 Ibid s 78. Harbour authorities are also local lighthouse authorities: see the Merchant Shipping Act 1995 s 193(2); and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1068.

9 For the meaning of 'the special Act' see PARA 602 note 2 ante.

10 For the meaning of 'rate' see PARA 616 note 4 ante.

11 This provision, as originally enacted, referred to 'an efficient and well appointed lifeboat, a Manby's mortar and a sufficient supply of Carte's rockets or such other mortar and rockets as the Admiralty should by writing under the hand of the secretary of the Admiralty approve'. As to the devolution of the Admiralty's functions to the Board of Trade and subsequently to the Secretary of State see PARA 603 ante. As to the Secretary of State see PARA 603 ante.

12 See the Harbours, Docks and Piers Clauses Act 1847 s 16. In practice, s 16 is never incorporated in modern local legislation.

13 Ibid s 16.

14 Ibid s 16. The harbour authority is liable to a penalty for every 24 hours during which the lifeboat or apparatus is not duly provided, maintained or stationed: see s 17. In practice, s 17 is never incorporated in modern local legislation.

15 Ibid s 18. The tide gauge and barometer must be maintained in a proper part of the harbour, dock or pier in a manner approved by the Secretary of State in writing: see s 18. In practice, s 18 is never incorporated in modern local legislation.

16 Ibid s 18. There is a penalty for every 24 hours during which the tide gauge and barometer are not provided or maintained or the account of wind and weather is not kept, and a penalty for each month the undertakers refuse or neglect to send the monthly account to the Secretary of State: see s 19.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/ (4) CONSERVANCY, SAFETY AND POLLUTION/(ii) Dangerous Vessels/698. Directions to dangerous vessels.

(ii) Dangerous Vessels

698. Directions to dangerous vessels.

A harbour master¹ may² give directions³ prohibiting the entry into, or requiring the removal from, the harbour⁴ for which he is harbour master of any vessel⁵ if in his opinion the condition of that vessel, or the nature or condition of anything it contains, is such that its presence in the harbour might involve grave and imminent danger to the safety of any person or property, or grave and imminent risk that the vessel may, by sinking or foundering in the harbour, prevent or seriously prejudice the use of the harbour by other vessels⁶.

Such directions may be given as respects the vessel in question to:

- 122 (1) the owner of the vessel, or to any person in possession of the vessel⁷;
- 123 (2) the master⁸ of the vessel⁹; or
- 124 (3) any salvor in possession of the vessel or any person who is the servant or agent of any salvor in possession of the vessel, and who is in charge of the salvage operation¹⁰.

A person who without reasonable excuse contravenes or fails to comply with any directions given¹¹ by a harbour master is guilty of an offence¹², but it is a defence for a person charged with such an offence to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of it¹³.

Where a harbour master has given directions¹⁴ as respects any vessel, the Secretary of State may, for the purpose of securing the safety of any person or vessel (including the vessel to which those directions relate) give directions to the harbour master requiring him:

- 125 (a) to permit the vessel to which the harbour master's directions relate to enter and remain, or (as the case may be) to remain, in the harbour in question¹⁵; and
- 126 (b) to take such action (if any) as may be specified in the directions given by him¹⁶, for the purpose of enabling the vessel to do so or for any connected purpose¹⁷,

and the directions given by the harbour master thereupon cease to have effect¹⁸.

1 'Harbour master' includes any dock master or pier master who is not a subordinate of a harbour master and any deputy or assistant of a harbour master or of such a dock master or pier master: Dangerous Vessels Act 1985 s 7. As to harbour masters and their powers generally see PARA 690 et seq ante.

2 le subject to *ibid* s 3 (see the text to notes 14-18 *infra*) and without prejudice to any other power already conferred upon the harbour master: see s 1.

3 Directions under *ibid* s 1(1) may be given in any such reasonable manner as the harbour master may think fit: s 1(4). At the time any directions under s 1(1) are given to any person, the harbour master must inform that person of the grounds for giving them: s 1(5). For the meaning of 'person' see PARA 605 note 4 ante.

4 For the meaning of 'harbour' see PARA 611 ante; definition applied by *ibid* s 7.

5 'Vessel' includes: (1) a ship or boat, or any other description of craft used in navigation; (2) a rig, raft or floating platform, or any other moveable thing constructed or adapted for floating on, or partial or total submersion in, water; and (3) a seaplane, a hovercraft within the meaning of the Hovercraft Act 1968 or any other amphibious vehicle: Dangerous Vessels Act 1985 s 7. As to the meaning of 'used in navigation' see *Steedman v Schofield* [1992] 2 Lloyd's Rep 163. For the meaning of 'hovercraft' see PARA 611 note 2 ante. No directions under the Dangerous Vessels Act 1985 s 1 are to apply in relation to: (a) any vessel belonging to Her Majesty, or employed in the service of the Crown for any purpose, including any such vessel in the possession of a salvor; or (b) any pleasure boat of 24 metres or less in length: s 6.

6 *Ibid* s 1(1). In determining whether to give any direction under s 1(1) in any particular case, the harbour master must have regard to all the circumstances of that case and, in particular, he must have regard to the safety of any person or vessel (whether that person or vessel is in or outside the harbour and including the vessel in question in that case): s 1(3). Directions under s 1 have no effect in so far as they are inconsistent with the exercise by or on behalf of the Secretary of State of a power under the Merchant Shipping Act 1995 s 108A, Sch 3A (as added) (safety directions: see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 686), would interfere with a person's compliance with a direction under that Schedule, or would interfere with action taken by virtue of that Schedule: Dangerous Vessels Act 1985 s 6A (added by the Marine Safety Act 2003 s 3(1), Sch 2 para 1). As to the Secretary of State see PARA 603 ante.

Where: (1) a harbour authority is liable for any loss or damage occurring outside the harbour of that authority in consequence of directions given by a harbour master in purported exercise of his powers under the Dangerous Vessels Act 1985 s 1; and (2) the provisions of the Merchant Shipping Act 1995 s 191 (which limits the liability of harbour, conservancy, dock and canal authorities: see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1064) would apply so as to limit that liability if the loss or damage in question had occurred in that harbour, then, for the purposes of that Act, that loss or damage is deemed to have occurred in that harbour: Dangerous Vessels Act 1985 s 2 (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 74). For the meaning of 'harbour authority' see PARA 619 ante; definition applied by the Dangerous Vessels Act 1985 s 7.

7 *Ibid* s 1(2)(a).

8 In this provision 'master' means the person having command or charge of the vessel, but does not include a pilot (that is to say, a person not belonging to the vessel who has the conduct of it): *ibid* s 1(2).

9 *Ibid* s 1(2)(b).

10 *Ibid* s 1(2)(c). As to salvage see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 876 et seq.

11 le directions under *ibid* s 1: see the text to notes 1-10 *supra*.

12 *Ibid* s 5(1). The offence is punishable, on summary conviction, by a fine not exceeding £25,000 and, on conviction on indictment, by a fine: s 5(1).

13 *Ibid* s 5(2). As to the standard of proof to be met by the accused see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1370-1371.

14 le directions under *ibid* s 1: see the text to notes 1-10 *supra*.

15 *Ibid* s 3(1)(a).

16 le directions given under *ibid* s 3.

17 *Ibid* s 3(1)(b).

18 Ibid s 3(1). A harbour master to whom directions are given by the Secretary of State must give notice of those directions as respects the vessel in question to the person to whom the directions under s 1 were given or, failing that, to any of the other persons mentioned in s 1(2) (see heads (1)-(3) in the text), in any such reasonable manner as the harbour master may think fit: s 3(2). It is the duty of the harbour master to take any action in relation to that vessel specified in those directions (s 3(2)(a)); and it is the duty of the harbour master and the harbour authority to take all such further action as may be reasonably necessary to enable that vessel to enter and remain, or to remain, in the harbour (s 3(2)(b)).

UPDATE

698 Directions to dangerous vessels

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/ (4) CONSERVANCY, SAFETY AND POLLUTION/ (iii) Dangerous Substances/(A) HARBOURS, DOCKS AND PIERS CLAUSES ACT 1847/699. Combustible matter, fires, lights and gunpowder.

(iii) Dangerous Substances

(A) HARBOURS, DOCKS AND PIERS CLAUSES ACT 1847

699. Combustible matter, fires, lights and gunpowder.

The Harbours, Docks and Piers Clauses Act 1847 contains various provisions relating to the protection of harbours, docks and piers¹. Every person who is the owner² of or who has charge of any tar, pitch, resin, spirituous liquors, turpentine, oil or other combustible thing which is on any quay, dock or wharf belonging to the harbour authority³, or on the deck of any vessel⁴ within the harbour or dock, or at or near the pier, must cause it to be removed to a place of safety within two hours after being required to do so by notice in writing⁵ signed by the harbour master⁶. If any such combustible thing remains on any part of the quays or works connected with the harbour, dock, or pier, or on the deck of any vessel within the harbour or dock, or at or near the pier, after sunset, the owner or person having the charge of it must provide a sufficient number of persons to guard the same from half an hour before sunset to half an hour after sunrise⁷. The boiling or heating of pitch, tar, resin, turpentine, oil or other combustible matter in any vessel lying within the harbour or dock or near the pier, or in any place within the limits of the harbour, dock or pier, except in a place and in the manner specially laid down for the purpose by the harbour authority, is an offence⁸.

Any person who has or causes to be had any fire, candle or lamp lit within any of the docks or the works belonging to them, except at a time and in the manner permitted by the harbour authority's byelaws⁹, is guilty of an offence¹⁰. Any person who has or causes to be had any fire or lighted candle or lamp in any vessel within the harbour or dock, or at or near the pier, except with the permission of the harbour master, is also guilty of an offence¹¹. The harbour master may enter any vessel within the harbour or dock, or at or near the pier, to search for any fire or light unlawfully in or suspected to be unlawfully in the vessel, and may extinguish it¹², and any person who obstructs the harbour master in the execution of this duty is guilty of an offence¹³.

Any person who brings any loaded gun on the quays or works of the harbour or dock, or on the pier, or who has any loaded gun in, or allows it to remain in, any vessel in the harbour or dock, or at or near the pier, is guilty of an offence¹⁴. The Queen's harbour master¹⁵, or any person with authority in writing from the Secretary of State¹⁶, may with proper assistants enter any vessel¹⁷ in a dockyard port¹⁸ and search for gunpowder, shotted or loaded guns, fire or light or combustible substances¹⁹ unlawfully on board or suspected to be unlawfully on board and may extinguish any such light or fire²⁰. If any person wilfully obstructs the Queen's harbour master or authorised person exercising this power, he is guilty of an offence²¹.

1 For the meaning of 'harbour, dock or pier' see PARA 663 note 3 ante. The provisions of the Harbours, Docks and Piers Clauses Act 1847 only apply when they are incorporated in local legislation: see PARA 602 ante. In practice, ss 69, 71 (both as amended) and s 72 are now of little practical importance. The control, handling and storage of dangerous substances are now provided for by the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37 (as amended): see PARA 700 et seq post.

2 For the meaning of 'owner' see PARA 673 note 11 ante.

3 The Harbours, Docks and Piers Clauses Act 1847 refers to 'the undertakers', for the meaning of which see PARA 602 note 2 ante. In practice, the undertakers will always be a harbour authority within the meaning of the Harbours Act 1964: see PARA 619 ante.

4 For the meaning of 'vessel' see PARA 672 note 3 ante.

5 For the meaning of 'writing' see PARA 605 note 3 ante.

6 Harbours, Docks and Piers Clauses Act 1847 s 69. For the meaning of 'the harbour master' see PARA 690 note 2 ante. There is a penalty of an amount not exceeding £2 for every hour the combustible thing remains after the expiration of two hours from the service of the notice: see s 69 (amended by virtue of the Decimal Currency Act 1969 s 10(1)). At harbours of Associated British Ports (see PARA 622 ante) the penalty is an amount not exceeding £50 for every such hour: British Transport Docks Act 1981 s 17, Sch 1. As to the recovery of penalties see PARA 758 post.

7 See the Harbours, Docks and Piers Clauses Act 1847 s 70. By 'sunrise' and 'sunset' is meant the actual moment at which the sun rises and sets at the place in question: *Gordon v Cann* (1899) 68 LJQB 434, DC. See also *Curtis v March* (1858) 3 H & N 866; *MacKinnon v Nicolson* 1916 JC 6; and TIME vol 97 (2010) PARA 316. If the owner or person having the charge of the material fails to provide such guards the harbour master may do so at the owner's expense, and may recover such expense as damages if it is not paid by the owner on demand: see the Harbours, Docks and Piers Clauses Act 1847 s 70. As to the recovery of such damages see PARA 758 post.

8 See *ibid* s 71(1). The penalty for such an offence is an amount not exceeding level 1 on the standard scale: see s 71 (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). At harbours of Associated British Ports the penalty is an amount not exceeding level 3 on the standard scale: British Transport Docks Act 1981 s 17, Sch 1 (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see PARA 605 note 13 ante.

9 As to byelaws see PARA 687 ante.

10 Harbours, Docks and Piers Clauses Act 1847 s 71(3). The penalty for such an offence is an amount not exceeding level 1 on the standard scale: see s 71 (as amended: see note 8 supra). At harbours of Associated British Ports the penalty is an amount not exceeding level 3 on the standard scale: British Transport Docks Act 1981 s 17, Sch 1 (as amended: see note 8 supra).

11 Harbours, Docks and Piers Clauses Act 1847 s 71(2). The penalty for such an offence is an amount not exceeding level 1 on the standard scale: see s 71 (as amended: see note 8 supra). At harbours of Associated British Ports the penalty is an amount not exceeding level 3 on the standard scale: British Transport Docks Act 1981 s 17, Sch 1 (as amended: see note 8 supra).

12 Harbours, Docks and Piers Clauses Act 1847 s 72.

13 *Ibid* s 72. The penalty for such an offence is an amount not exceeding level 1 on the standard scale: see s 72 (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). At harbours of Associated British Ports the penalty is an amount not exceeding level 3 on the standard scale: British Transport Docks Act 1981 s 17, Sch 1 (as amended: see note 8 supra).

14 Harbours, Docks and Piers Clauses Act 1847 s 71(4). The penalty for such an offence is an amount not exceeding level 1 on the standard scale: see s 71 (as amended: see note 8 supra). At harbours of Associated British Ports the penalty is an amount not exceeding level 3 on the standard scale: British Transport Docks Act 1981 s 17, Sch 1 (as amended: see note 8 supra).

15 As to the appointment and general powers of the Queen's harbour master see PARA 693 ante.

16 This provision as enacted refers to 'the Admiralty'. As to the devolution of the dockyard ports functions of the Admiralty to the Secretary of State see PARA 689 note 14 ante. As to the Secretary of State see PARA 603 ante.

17 For the meaning of 'vessel' see PARA 689 note 3 ante.

18 For the meaning of 'dockyard port' see PARA 613 ante.

19 As to the power of Her Majesty to make regulations by Order in Council as to guns, gunpowder, fire, light and combustible substances in dockyard ports see PARA 689 ante.

20 Dockyard Ports Regulation Act 1865 s 12 (amended by the Defence (Transfer of Functions) Act 1964 ss 1(1)(a), (2), 3(2), (6)).

21 Dockyard Ports Regulation Act 1865 s 12. The penalty for such an offence is a fine not exceeding level 1 on the standard scale: s 12 (amended by virtue of the Criminal Justice Act 1982 ss 37, 46).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/ (4) CONSERVANCY, SAFETY AND POLLUTION/ (iii) Dangerous Substances/(B) DANGEROUS SUBSTANCES IN HARBOUR AREAS REGULATIONS 1987/700. Scope of the Dangerous Substances in Harbour Areas Regulations 1987.

(B) DANGEROUS SUBSTANCES IN HARBOUR AREAS REGULATIONS 1987

700. Scope of the Dangerous Substances in Harbour Areas Regulations 1987.

The Dangerous Substances in Harbour Areas Regulations 1987¹ govern the entry into, and the handling², carriage, loading and unloading and storage of dangerous substances³ within harbours⁴ and harbour areas⁵; and the loading and unloading of explosives in certain other places as well⁶.

The regulations apply in every harbour and harbour area in Great Britain⁷ and to any premises or activities in any part of a harbour area in the territorial waters adjacent to Great Britain to which or in relation to which certain provisions of the Health and Safety at Work etc Act 1974 apply⁸ but not⁹ elsewhere¹⁰. Certain dangerous substances¹¹ and certain persons in relation to specified activities¹² are excepted from the application, or the full application, of the regulations.

1 The Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37 (amended by SI 1988/712; SI 1990/2487; SI 1990/2605; SI 1992/743; SI 1993/1746; SI 1994/669; SI 1994/3247; SI 1996/2092; SI 1996/2095; SI 1997/2367; SI 1998/2885; SI 2003/1431; SI 2004/568; SI 2004/3168; SI 2005/2929), which were made under powers contained in the Health and Safety at Work etc Act 1974 and the Explosives Act 1875, and which replaced and substantially reproduced provisions formerly contained in byelaws under the Explosives Act 1875 and the Petroleum (Consolidation) Act 1928 and in the Conveyance in Harbours of Military Explosives Regulations 1977, SI 1977/890 (revoked).

2 'Handling', in relation to a dangerous substance (see note 3 infra), includes the operations of loading, unloading and transferring that substance and cleaning, purging, gas-freeing and ballasting any tank on a vessel which contains a dangerous substance or its vapour: Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 2(1). 'Loading and unloading', in relation to a dangerous substance, means the actual operations of loading and unloading a vessel and includes any acts of ullaging, sounding or sampling

carried out in accordance with such operations and the handling of substances ancillary to such operations: reg 2(1). 'Vessel' means every description of vessel, however propelled or moved, and includes a hovercraft, a hydrofoil vessel, anything constructed or adapted to carry persons or goods by water and a flying boat or seaplane on or in the water: reg 2(1).

3 'Dangerous substance' means any substance (including any preparation or other mixture) which, by reason of characteristic properties of a kind specified in *ibid* Sch 1 Pt I col 1, creates a risk to the health or safety of any person when the substance is in a harbour or harbour area (see note 4 *infra*) and includes, whether or not it would otherwise be a dangerous substance, any substance or article (with some exceptions) which is within the definition of 'dangerous goods' in the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367 (see SHIPPING AND MARITIME LAW vol 94 (2008) PARAS 656-657, 1186): see the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, regs 2(1), 3(1) (reg 3(1) amended by SI 1997/2367). As to qualifications to the definition of 'dangerous substance' see the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 3(2) (amended by SI 1996/2092; SI 2004/568). As to the specified substances which are excepted from the definition of 'dangerous substance' see the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 3(3), (4), Sch 2 (reg 3(3) amended by SI 1990/2487). As to vessels carrying liquid dangerous substance in bulk see the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 3(5). 'Liquid' includes liquefied gas: reg 2(1).

4 'Harbour' means any harbour, whether natural or artificial, and any port, haven, estuary, tidal or other river, canal or inland navigation waterway navigated by sea-going vessels, in each case outside a harbour area, and includes: (1) a dock, wharf or other work in or at which vessels can obtain shelter or ship or unship goods or passengers; (2) harbour land, being land adjacent to a harbour and occupied wholly or mainly for the purpose of activities carried on within the harbour; (3) a monobuoy connected to one or more storage facilities in a harbour and its monobuoy area: *ibid* reg 2(1).

'Harbour area' means: (a) all areas of water within the statutory jurisdiction of a statutory harbour authority (except areas of water which are within the statutory jurisdiction of another harbour authority where those areas of water are used primarily for vessels using berths or land within that overlapping harbour area); (b) any berth abutting any of the areas of water falling within head (a) *supra* where the loading or unloading of any dangerous substance takes place (whether or not that berth is for other purposes under the statutory jurisdiction of the harbour authority); (c) any land within the statutory jurisdiction of a statutory harbour authority or occupied by a statutory harbour authority, used in connection with the loading or unloading of vessels; (d) a monobuoy connected to one or more storage facilities in a harbour area: reg 2(1).

'Statutory harbour authority' means a harbour authority within the meaning of the Harbours Act 1964 s 57 (see PARA 619 *ante*), but a person is not a statutory harbour authority in respect of a harbour area which is inside the harbour area of another statutory harbour authority and which is used wholly or mainly for vessels bringing or receiving cargoes in connection with the manufacture of goods or electricity by that person or a related company: see the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 2(1). 'Harbour authority' means: (i) in relation to a harbour area, the statutory harbour authority by reference to which that harbour area is defined; (ii) in relation to a harbour, any person being, or claiming to be, the proprietor of that harbour, or any person being or claiming to be entrusted with the duty, or invested with the power of, improving, managing, maintaining or regulating that harbour: reg 2(1). For the meaning of 'person' see PARA 605 note 4 *ante*.

'Berth' means any dock, pier, jetty, quay, wharf or similar structure (whether floating or not) or buoy berth, in each case within a harbour or harbour area, at which a vessel may tie up, and includes any plant or premises, other than a vessel, used for purposes ancillary or incidental to the loading or unloading of a dangerous substance within the curtilage of that berth, but does not include a monobuoy or, in regs 18, 21(6) (see PARA 705 *post*), reg 27(1) (see PARA 707 *post*), any other buoy berth: reg 2(1). 'Monobuoy' means a mooring buoy at which a dangerous substance may be loaded onto or unloaded from a vessel and which is connected to one or more storage facilities in a harbour or harbour area and includes the pipeline or pipelines by which it is so connected; and 'monobuoy area' means the area of water surrounding a monobuoy where loading or unloading of dangerous substances takes place, but does not extend to the area of water surrounding the pipeline or pipelines connected to it: reg 2(1).

5 As to the entry of dangerous substances into harbour areas see the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, Pt II (regs 6, 7) (as amended); and PARAS 701-702 *post*. As to the handling of dangerous substances see Pt IV (regs 16-18); and PARA 705 *post*. As to the carriage of liquid dangerous substances in bulk see Pt V (regs 19-22); and PARA 705 *post*. As to the storage of dangerous substances see Pt VIII (regs 29-32) (as amended); and PARA 706 *post*.

6 See *ibid* Pt IX (regs 33-42) (as amended); and PARA 708 *post*. 'Explosive' means, in relation to an article or substance which falls within reg 3 (see note 3 *supra*), either goods of Class 1 in the IMDG Code or explosives of the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, Sch 1 Pt I Class 1: reg 2(1). 'The IMDG Code' has the same meaning as in the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367 (see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 657): Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 2(1) (definition amended by SI 1997/2367).

7 For the meaning of 'Great Britain' see PARA 613 note 1 ante.

8 The premises or activities referred to in the text are those to which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 (as amended) apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127, art 6 (but only in so far as it relates to monobuoys) and art 8 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 305): see the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 5(1); and the Interpretation Act 1978 s 17(2)(a).

9 le except as provided by the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 33 (as amended): see PARA 708 post.

10 Ibid reg 5(1).

11 See ibid reg 5(2), (3).

12 The duties imposed by ibid regs 16, 17(1), 18 (see PARA 705 post) do not extend to the master or crew of a sea-going ship, or to the employer of such persons, in relation to the normal shipboard activities of a ship's crew under the direction of the master: reg 5(4). 'Master' includes any person, other than a pilot, having charge of a vessel: reg 2(1).

UPDATE

700 Scope of the Dangerous Substances in Harbour Areas Regulations 1987

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 1--SI 1987/37 further amended: SI 2007/1573.

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701. Entry of dangerous substances into harbour areas.

A dangerous substance¹ must not be brought into a harbour² or harbour area³ unless, in the case of a vessel⁴, the master⁵ or agent⁶, or, in the case of any other mode of transport, the operator⁷, has given notice⁸ to the harbour master and, if the substance is to be brought to a berth, the berth operator⁹. The obligation to give notice does not apply to certain ferry boats¹⁰. A harbour master may except any person from the requirement to give notice where this appears to him to be necessary for securing the health or safety of any person¹¹.

1 For the meaning of 'dangerous substance' see PARA 700 note 3 ante. Certain dangerous substances are excepted from the operation of the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 6(1): see reg 6(4).

2 For the meaning of 'harbour' see PARA 700 note 4 ante.

3 For the meaning of 'harbour area' see PARA 700 note 4 ante.

4 For the meaning of 'vessel' see PARA 700 note 2 ante.

5 For the meaning of 'master' see PARA 700 note 12 ante.

6 Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 6(1)(a).

7 Ibid reg 6(1)(b). 'Operator' means in relation to a road vehicle: (1) a person who holds, or is required to hold, a licence for the use of that vehicle for the carriage of goods on a road; or (2) where no such licence is required, the keeper of the vehicle: regs 2(1), 4(1). For the meaning of 'person' see PARA 605 note 4 ante. 'Operator' means in relation to any other mode of transport and in relation to a berth or a storage tank, the person who has for the time being day-to-day control of its running: regs 2(1), 4(2). For the meaning of 'berth' see PARA 700 note 4 ante. 'Operator' means in relation to a portable tank (other than the carrying tank of a road tanker) which is being conveyed by road, either: (a) the owner of the tank or his agent, if that person has a place of business in Great Britain, and is identified as the owner of or, as the case may be, as the agent of the owner of the tank on the portable tank itself or on a document carried on the vehicle; or (b) if no person satisfies the requirements set out in head (a) supra, the operator of the vehicle on which the portable tank is carried: regs 2(1), 4(3). For these purposes, a person to whom a portable tank is leased or hired is to be treated as the owner of that portable tank: regs 2(1), 4(4). 'Portable tank' means: (i) a portable tank with a capacity of 450 litres or more; and (ii) a tank as defined in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004, SI 2004/568: Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 2(1) (definition amended by SI 2004/268). 'Storage tank' means a fixed tank designed for the storage of substances in bulk: Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 2(1).

8 The notice must contain the particulars specified in ibid reg 6(3) and must be given not less than 24 hours, or such longer time, in respect of notice both to the harbour master and to the berth operator, as the harbour master may for operational reasons require but which must not exceed 14 days, before the substance is brought in or, if it is not reasonably practicable to give 24 hours' notice, such shorter time in respect of both notices as the harbour master and the berth operator may together agree: reg 6(1). The notice may be given up to six months in advance and must be in writing or in such other form as the harbour master may agree and must contain such information as is adequate to evaluate the risk created by the substance to the health and safety of any person: reg 6(3). In the case of a notice given by the master or agent of a vessel, it must contain certain additional information: see reg 6(3). For the meaning of 'writing' see PARA 605 note 3 ante; and for the meaning of 'month' see PARA 671 note 30 ante. Where a vessel carrying a dangerous substance is to enter a harbour area not to load or unload there but on the way to loading or unloading in an overlapping or in an abutting harbour area, the notice must be given to the harbour master of that area as well as to the harbour master of the area which the vessel passes through and, if the substance is to be brought to a berth, to the berth operator of that overlapping or abutting harbour area: reg 6(2). For the meanings of 'loading' and 'unloading' see PARA 700 note 2 ante.

'Harbour master' means the harbour master, dock master or other officer duly appointed by the harbour authority to act in any such capacity or any person having authority so to act: reg 2(1). For the meaning of 'harbour authority' see PARA 700 note 4 ante. As to the appointment of harbour masters see PARA 690 ante.

9 Ibid reg 6(1).

10 See ibid reg 9.

11 See ibid reg 6(5). Any such exemption from the requirement to give notice to the harbour master or a berth operator may be granted subject to conditions and to a limit of time and may be revoked at any time (reg 6(5)); and a harbour master granting or revoking such an exemption must record the decision as soon as reasonably practicable including any conditions and limit of time (reg 6(6)).

UPDATE

701 Entry of dangerous substances into harbour areas

NOTE 1--SI 1987/37 reg 6(4) amended: SI 2007/1573.

NOTE 7--In the definition of 'portable tank', now head (ii) a tank as defined in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573: SI 1987/37 reg 2(1) (amended by SI 2007/1573).

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702. Harbour master's powers of prohibition, removal and regulation relating to dangerous substances.

A harbour master¹ may give directions to regulate or prohibit the entry into², require the removal from³, or regulate the handling⁴, movement or position within⁵, the harbour⁶ or harbour area⁷ of: (1) any dangerous substance⁸ if, in his opinion, its condition is such as to create a risk to the health or safety of any person⁹; or (2) any freight container, portable tank or receptacle containing a dangerous substance or any vehicle or vessel¹⁰ carrying a dangerous substance, if, in his opinion, the condition of the container, tank or receptacle, vehicle or vessel is such as to create a risk to the health or safety of any person from the substance which it contains or carries¹¹.

In determining whether to give a direction in any particular case, the harbour master must have regard to all the circumstances of that case and in particular to the safety of any person whether within or outside the harbour or harbour area¹², but he is not under a duty to examine the condition of any substance, freight container, portable tank, receptacle, vehicle or vessel¹³. Where the harbour master intends to give a direction requiring a dangerous substance to be removed by land from the harbour or harbour area he must first consult the chief officer of police for the police district in which the harbour or harbour area is situated¹⁴.

The Secretary of State¹⁵ may, for the purposes of securing the safety of any person, give directions to the harbour master requiring him to give such other directions as the Secretary of State may specify¹⁶.

1 For the meaning of 'harbour master' see PARA 701 note 8 ante.

2 Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 7(5)(a).

3 Ibid reg 7(5)(b).

4 For the meaning of 'handling' see PARA 700 note 2 ante.

5 Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 7(5)(c).

6 For the meaning of 'harbour' see PARA 700 note 4 ante.

7 Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 7(5). For the meaning of 'harbour area' see PARA 700 note 4 ante.

8 For the meaning of 'dangerous substance' see PARA 700 note 3 ante.

9 Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 7(1). A direction relating to the condition of a dangerous substance must be given to the person having control of that substance or of any freight container, portable tank or receptacle containing that substance or of any vehicle or vessel carrying that substance: see reg 7(1). A person to whom directions are given by a harbour master must comply with them: reg 7(7). For the meaning of 'person' see PARA 605 note 4 ante. As to enforcement see PARA 709 post.

'Freight container' means a container as defined in the Freight Containers (Safety Convention) Regulations 1984, SI 1984/1890, reg 2(1) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 714) other than a portable tank: Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 2(1). 'Receptacle' includes any form of packaging used for the transport of a dangerous substance but does not include a freight container, a portable tank or a vehicle: reg 2(1). For the meaning of 'portable tank' see PARA 701 note 7 ante.

10 For the meaning of 'vessel' see PARA 700 note 2 ante.

11 Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 7(1), (2). The harbour master's power to give such directions is without prejudice to any powers that may be given to him by byelaws made under reg 43 (see PARA 709 post): reg 7(1), (2). A direction relating to the condition of any freight container, portable tank or receptacle containing a dangerous substance or of any vehicle or vessel carrying a dangerous substance must be given to the person having control of that freight container, portable tank, receptacle, vehicle or vessel or of any dangerous substance contained or carried therein: see reg 7(2). A person

to whom directions are given by a harbour master must comply with them: reg 7(7). The power to give directions under reg 7(1), (2) does not apply to any vessel in the service of the Crown or to any dangerous substance, freight container, portable tank or receptacle being carried by such a vessel: reg 7(8).

12 Ibid reg 7(3). A harbour master may give directions in such reasonable manner as he may think fit: reg 7(10).

13 Ibid reg 7(9).

14 Ibid reg 7(6).

15 As to the Secretary of State see PARA 603 ante.

16 See the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 7(4)(a). The directions given by the harbour master under reg 7(4) must be given to such person having control of a dangerous substance or of a freight container, portable tank or receptacle containing a dangerous substance or of a vehicle or vessel carrying a dangerous substance as may be specified by the Secretary of State, and must concern such of the matters set out in reg 7(5) (see the text to notes 1-7 supra) as may be specified by the Secretary of State and when given cause the directions originally given by the harbour master under reg 7(1) or (2) (see the text to notes 1-11 supra) or both to cease to have effect: reg 7(4)(b).

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703. Anchoring, mooring and mobility of vessels.

The master¹ of a vessel² which is carrying a dangerous substance³ or on board which any dangerous substance is to be loaded must anchor or moor his vessel only at such places and at such times as the harbour master⁴ may from time to time direct and must ensure that any conditions the harbour master may impose with regard to anchoring or mooring are complied with⁵. The harbour master must, before giving any directions as to the berthing of a vessel at a berth⁶ not operated by the harbour authority⁷, consult the operator⁸ of that berth⁹. When he has anchored or moored his vessel, the master must ensure that it is not moved except: (1) if the harbour master, after consultation with the berth operator if the vessel is at a berth, so permits or directs¹⁰; (2) in an emergency or for the safety of persons on the vessel or on the berth¹¹; or (3) to comply with the terms of an explosives licence¹². The master must ensure that any directions given by the harbour master as to the movement of his vessel are complied with¹³.

The master of a vessel, other than a dumb barge¹⁴, carrying any of certain specified dangerous substances¹⁵ in the quantity, if any, specified must ensure that the vessel is in a state of readiness to be moved at any time, tidal conditions permitting¹⁶.

1 For the meaning of 'master' see PARA 700 note 12 ante.

2 For the meaning of 'vessel' see PARA 700 note 2 ante.

3 For the meaning of 'dangerous substance' see PARA 700 note 3 ante. The Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 14 does not apply in respect of any vessel on which the only dangerous substance or substances are one or more explosives in Division 1.4: reg 14(6). 'Division' has the same meaning as in the IMDG Code: reg 2(1) (definition substituted by SI 2004/568). For the meanings of 'explosive' and 'the IMDG Code' see PARA 700 note 6 ante.

4 For the meaning of 'harbour master' see PARA 701 note 8 ante.

5 Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 14(1).

6 For the meaning of 'berth' see PARA 700 note 4 ante.

- 7 For the meaning of 'harbour authority' see PARA 700 note 4 ante.
- 8 For the meaning of 'operator' see PARA 701 note 7 ante.
- 9 Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 14(2). Nothing in reg 14(2) prejudices the power of the harbour master to give directions under any other enactment which applies to the case: reg 14(7). For the meaning of 'enactment' see PARA 628 note 26 ante. While the vessel is at a berth, the berth operator must ensure that adequate fenders are kept between the vessel and the berth: reg 14(5).
- 10 Ibid reg 14(3)(a). Nothing in reg 14(3)(a) prejudices the power of the harbour master to give directions under any other enactment which applies to the case: reg 14(7).
- 11 Ibid reg 14(3)(b).
- 12 Ibid reg 14(3)(c). For the meaning of 'explosives licence' see PARA 708 note 11 post.
- 13 Ibid reg 14(4). As to enforcement see PARA 709 post.
- 14 'Barge' includes any lighter or similar vessel whether self-propelled or not: ibid reg 2(1).
- 15 Ie any dangerous substance specified in ibid reg 15(1), Sch 3 (amended by SI 1994/669; SI 2004/568).
- 16 Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 15(1). The harbour master may, if he is satisfied that the health or safety of any person will not be prejudiced, exempt by a certificate in writing a master, other than the master of a vessel carrying any explosive specified in Sch 3 para (a), from the requirements of reg 15(1); and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing: reg 15(2). For the meaning of 'writing' see PARA 605 note 3 ante.

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704. Marking and navigation of vessels.

Where a vessel¹ is carrying any of certain specified dangerous substances² in specified quantities³, the master⁴ of that vessel must ensure that it displays flags or lights⁵. The operator⁶ of a barge⁷ which is carrying 3,000 kilograms or more of one or more dangerous substances, or in the case of a tank barge⁸ any quantity of a dangerous substance, must ensure that it displays hazard warning panels arranged so as to be visible on each side of the barge⁹.

The master of a vessel must not bring it alongside a moored or anchored vessel which is displaying a required flag or light indicating that it is carrying a dangerous substance without the requisite permission¹⁰ and must otherwise keep his vessel at a safe distance¹¹.

Certain vessels¹² carrying dangerous substances must carry and use radios¹³. The operator of a harbour craft¹⁴ which is carrying a dangerous substance or which is towing a vessel which is carrying a dangerous substance must ensure that: (1) the master of that harbour craft is competent to perform the duties required of him¹⁵; and (2) the master and any other person on duty on the harbour craft are not under the influence of drink or a drug to such an extent that their capacity to carry out their duties is impaired¹⁶. The master of any such harbour craft must control it and any vessel being towed by it with due care and diligence¹⁷.

1 For the meaning of 'vessel' see PARA 700 note 2 ante.

2 le a dangerous substance specified in the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 8(1), Sch 3 (amended by SI 1994/669; SI 2004/568). For the meaning of 'dangerous substance' see PARA 700 note 3 ante.

3 le in at the least the quantity, if any, specified in the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, Sch 3 (as amended: see note 2 supra).

4 For the meaning of 'master' see PARA 700 note 12 ante.

5 See the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 8, Sch 4. This requirement does not apply to certain ferry boats: reg 9.

6 For the meaning of 'operator' see PARA 701 note 7 ante.

7 For the meaning of 'barge' see PARA 703 note 14 ante.

8 'Tank barge' means a barge constructed or adapted to carry liquids in bulk: Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 2(1). For the meaning of 'liquid' see PARA 700 note 3 ante. A substance is carried by, loaded into or unloaded from a vessel in bulk if it is, without any intermediate form of containment, carried in, loaded into or unloaded from the vessel's hold, tank or cargo space, which is a structural part of or permanently attached to the vessel: reg 2(3)(a).

9 See *ibid* reg 11, Sch 5.

10 le the permission of the berth operator and the master of that vessel if it is at a berth (*ibid* reg 10(1)(a)), or the permission of the harbour master and the master of that vessel if it is elsewhere (reg 10(1)(b)). The permission, referred to in reg 10(1), of the berth operator and of the harbour master may relate to a named vessel, to a class of vessels or to vessels generally: reg 10(2). For the meaning of 'berth' see PARA 700 note 4 ante; and for the meaning of 'harbour master' see PARA 701 note 8 ante.

11 See *ibid* reg 10(1). The reference in the text to a required flag or light is to one required by reg 8: see the text to notes 1-5 supra.

12 le a vessel of 50 tons or more (which is not a dumb craft) carrying a dangerous substance, or a vessel towing one or more dumb craft where the combined gross tonnage of all the dumb craft being towed is 50 tons or more and at least one is carrying a dangerous substance: see *ibid* reg 13(1). 'Dumb craft' means a vessel not possessing mechanical means of propulsion and includes a dumb barge and a dracone: reg 2(1). Where in the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, a duty is imposed upon the master of a vessel, then, in relation to a dumb craft, that duty is imposed, while the dumb craft is being towed, upon the master of the towing vessel (reg 2(2)(a)) and, at any other time, upon the operator of the dumb craft (reg 2(2)(b)).

13 See *ibid* reg 13(2), (3).

14 'Harbour craft' means a self-propelled craft which is used wholly or mainly within a harbour or harbour area or within such places and on adjoining inland waterways: *ibid* reg 2(1). For the meanings of 'harbour' and 'harbour area' see PARA 700 note 4 ante.

15 *Ibid* reg 12(1)(a).

16 *Ibid* reg 12(1)(b).

17 *Ibid* reg 12(2).

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705. Handling of dangerous substances and the carriage of liquid dangerous substances in bulk.

Every person who has to any extent control of, or who is engaged in, the handling¹ of a dangerous substance² must ensure that, so far as is reasonably practicable, nothing in the manner in which that substance is handled is such as might create a risk to the health or safety of any person³. Such a person must receive proper information, instruction, training and supervision⁴. Where a dangerous substance may give rise to a risk of fire or explosion, every person engaged in the handling of that substance and both the owner and the operator⁵ of any berth⁶ on which that substance is kept or handled, must observe all the precautions necessary for preventing, and for minimising the effect of, any such fire or explosion⁷.

The master⁸ of a vessel to which any of certain specified international codes published by the International Maritime Organisation apply⁹ must not carry, load or unload any liquid¹⁰ dangerous substance in bulk¹¹ unless either the vessel has a valid certificate of fitness for the carriage of the substance in bulk¹² or the harbour master¹³ has given his permission in writing¹⁴. There are substantially similar restrictions in relation to barges¹⁵.

The transfer of a liquid dangerous substance from one vessel to another is forbidden without the written permission of the harbour master and, where the vessel is at a berth, the berth operator¹⁶. Certain safety precautions must be taken where a liquid dangerous substance is loaded or unloaded at a berth or transferred between two vessels¹⁷. The harbour master's permission is required for the carrying out of certain tank-cleaning activities after a dangerous substance has been unloaded from a vessel¹⁸; and if the vessel is at a berth, the berth operator's permission is also required¹⁹.

1 For the meaning of 'handling' see PARA 700 note 2 ante.

2 For the meaning of 'dangerous substance' see PARA 700 note 3 ante.

3 Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 16.

4 See *ibid* reg 17.

5 For the meaning of 'operator' see PARA 701 note 7 ante.

6 For these purposes, 'owner of the berth' means any person having overall control and management of the berth, and includes a lessee: Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 18(4). For the meaning of 'berth' see PARA 700 note 4 ante.

7 *Ibid* reg 18(1). The owner of the berth must ensure that adequate means for fighting fires are available: reg 18(2)(a). The berth operator must ensure that adequately trained personnel are available sufficient to operate the fire-fighting equipment that would be required to provide first-aid fire-fighting appropriate to the type and quantity of the dangerous substance being loaded or unloaded: reg 18(2)(b). The operator and the owner of the berth must ensure that ready access by the emergency services is available at all times to any vessel at a berth which is carrying, loading or unloading any such dangerous substance: reg 18(2)(c). For the meaning of 'vessel' see PARA 700 note 2 ante. For the meanings of 'loading' and 'unloading' see PARA 700 note 2 ante. No person may smoke, use naked lights or any other source of ignition or carry any source of ignition within any area in which such activities have been prohibited by the harbour authority or the berth operator: reg 18(3). For the meaning of 'harbour authority' see PARA 700 note 4 ante.

8 For the meaning of 'master' see PARA 700 note 12 ante.

9 I.e. the codes specified in the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 19(2). As to the International Maritime Organisation see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 13.

10 For the meaning of 'liquid' see PARA 700 note 3 ante.

11 As to references to the carrying, loading or unloading of any substance in bulk see PARA 704 note 8 ante.

12 See the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 19(1)(a). A certificate of fitness means a certificate issued in accordance with whichever of the International Maritime Organisation Codes applies to the particular vessel issued under the authority of the government of the country of registration of the vessel: see reg 19(1)(a).

13 For the meaning of 'harbour master' see PARA 701 note 8 ante.

14 See the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 19(1)(b). For the meaning of 'writing' see PARA 605 note 3 ante.

15 See *ibid* reg 19(3). For the meaning of 'barge' see PARA 703 note 14 ante.

16 See *ibid* reg 20.

17 See *ibid* reg 21.

18 See *ibid* reg 22.

19 See *ibid* reg 22.

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706. Packaging, labelling and storage of dangerous substances.

Where a dangerous substance¹ is brought into a harbour² or harbour area³ from inland in a freight container⁴, portable tank⁵ or receptacle⁶, the original consignor of that freight container, portable tank or receptacle, as the case may be, must ensure that it is labelled in accordance with the statutory requirements⁷.

Any person bringing a freight container containing any dangerous substance into a harbour or harbour area from inland must ensure that that container is accompanied by a certificate, given by the person responsible for loading⁸ the dangerous substance into the freight container, certifying that the substance has been safely packed inside that container⁹. A person opening a freight container containing any dangerous substance must take sufficient precautions to protect himself and others in the vicinity from the effect of any spillage or escape of any dangerous substance and must adequately ventilate the interior before entering the freight container or unloading¹⁰ anything from that container and, if he is an employee, his employer must also ensure that he takes such precautions¹¹.

Where a dangerous substance is brought into a harbour or harbour area from inland in a tank the operator of the tank must ensure that it is correctly filled¹²; and where the substance is brought in a receptacle, the original consignor of the substance must ensure that the receptacle is properly designed, constructed, maintained and closed and that it is correctly filled¹³.

Provision is also made as respects the storage of dangerous substances in harbours and harbour areas ancillary to loading or unloading within the harbour or harbour area¹⁴. In particular, the operator of any storage tank and, where the tank is on a berth¹⁵, the berth operator must, before it is used for the storage of a dangerous substance in bulk¹⁶, consult the relevant authority with respect to the fire precautions that should be taken¹⁷. Parking areas must be designated for road vehicles carrying dangerous substances which use a berth¹⁸.

1 For the meaning of 'dangerous substance' see PARA 700 note 3 ante.

2 For the meaning of 'harbour' see PARA 700 note 4 ante.

3 For the meaning of 'harbour authority' see PARA 700 note 4 ante.

4 For the meaning of 'freight container' see PARA 702 note 9 ante.

- 5 For the meaning of 'portable tank' see PARA 701 note 7 ante.
- 6 For the meaning of 'receptacle' see PARA 702 note 9 ante.
- 7 See the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 25 (amended by SI 1994/669; SI 1996/2092; SI 1997/2367; SI 2004/568).
- 8 For the meaning of 'loading' see PARA 700 note 2 ante.
- 9 Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 23(1).
- 10 For the meaning of 'unloading' see PARA 700 note 2 ante.
- 11 Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 23(2).
- 12 See *ibid* reg 24(a) (reg 24 substituted by SI 2004/568).
- 13 See the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 24(b) (as substituted: see note 12 *supra*).
- 14 See *ibid* Pt VIII (regs 29-32) (as amended). The operator of any storage tank must, before the storage tank is used for the storage of any dangerous substance, ensure that the tank (including any associated equipment) is: (1) properly designed, of adequate strength and of good construction from sound and suitable materials (reg 30(3)(a)); (2) suitable for the storage in bulk of that substance (reg 30(3)(b)); (3) properly maintained (reg 30(3)(c)); and (4) sited in a safe place (reg 30(3)(d)). The operator of a storage tank who transfers a dangerous substance into that tank must ensure that: (a) the substance is compatible with any other (whether dangerous or not) already in the tank (reg 30(4)(a)); (b) the substance does not cause a risk to the health or safety of any person by chemical or physical attack on the tank (including any associated equipment) (reg 30(4)(b)); and (c) the tank is filled safely and is not over-filled (reg 30(4)(c)). For the meanings of 'operator' and 'storage tank' see PARA 701 note 7 ante.

A person who stores a freight container, portable tank or receptacle containing a dangerous substance must ensure that: (i) so far as is reasonably practicable the conditions under which that freight container, portable tank or receptacle is stored are not such as might create a risk from that dangerous substance to the health or safety of any person (reg 31(a)); and (ii) the area in which it is stored is kept free from rubbish, vegetation and other matter where that might create any such risk (reg 31(b)).

The storage of certain substances regulated under other codes is excepted from the application of regs 30, 31: see reg 29 (amended by SI 2002/2776).
- 15 For the meaning of 'berth' see PARA 700 note 4 ante.
- 16 A substance is stored in bulk if it is stored without any intermediate form of containment in a storage tank: Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 2(3)(b).
- 17 See *ibid* reg 30(1), (2) (amended by SI 2005/1541). 'Relevant authority' means where the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, applies to the harbour or harbour areas within which the storage tank is situated, the enforcing authority within the meaning given by art 25; and, in any other case, the fire and rescue authority under the Fire and Rescue Services Act 2004 for the area in which the harbour or harbour area is situated: Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 30(5) (added by SI 2005/1541). As to fire and rescue services see FIRE SERVICES.
- 18 See the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 32.

UPDATE

706 Packaging, labelling and storage of dangerous substances

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 7--SI 1987/37 reg 25 further amended: SI 2007/1573.

NOTE 12--SI 1987/37 reg 24(a) amended: SI 2007/1573.

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707. Emergency arrangements and untoward incidents.

A harbour authority¹ must, before dangerous substances² are handled³ in the harbour⁴ or harbour area⁵, prepare and keep up to date, after consulting the emergency services and any other body which appears to it to be appropriate, an effective emergency plan⁶ for dealing with emergencies which involve, affect or could affect dangerous substances that are brought into or are handled in the harbour or harbour area as the case may be⁷.

The berth operator must ensure that at all times when a vessel⁸ loading, carrying or unloading⁹ a dangerous substance is at the berth and at any other time when there are risks from dangerous substances: (1) means of rapid communication with the emergency services are available¹⁰; and (2) adequate means of escape from that berth are provided for use in an emergency¹¹. Particular emergency arrangements must be observed in relation to the loading and unloading of any quantity of explosives¹² and of 25 kilograms or more of one or more dangerous substances¹³.

The master of a vessel carrying a dangerous substance must immediately inform the harbour master¹⁴ and, if the vessel is at a berth, the berth operator of any untoward incident¹⁵ which occurs or has occurred on the vessel¹⁶. The berth operator must immediately inform the harbour master and the master of any vessel at the berth of any untoward incident which occurs on the berth¹⁷. Where an untoward incident occurs during the operation of handling a dangerous substance, the person having control of that operation must stop the operation as soon as it is safe to do so¹⁸ and must immediately report the incident to the harbour master, to the operator of any berth and the master of any vessel which might be affected by the incident and, where appropriate, the emergency services¹⁹.

1 For the meaning of 'harbour authority' see PARA 700 note 4 ante.

2 For the meaning of 'dangerous substance' see PARA 700 note 3 ante.

3 For the meaning of 'handling' see PARA 700 note 2 ante.

4 For the meaning of 'harbour' see PARA 700 note 4 ante.

5 For the meaning of 'harbour area' see PARA 700 note 4 ante.

6 Port users and berth operators must, if requested by the harbour authority, co-operate with the harbour authority in preparing its plan: Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 26(2). A harbour authority must notify the contents of its plan to those responsible for putting it into effect: reg 26(3). For the meaning of 'berth' see PARA 700 note 4 ante; and for the meaning of 'operator' see PARA 701 note 7 ante.

7 Ibid reg 26(1).

8 For the meaning of 'vessel' see PARA 700 note 2 ante.

9 For the meanings of 'loading' and 'unloading' see PARA 700 note 2 ante.

10 Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 27(1)(a).

11 Ibid reg 27(1)(b). The operator of any berth where any dangerous substance is being loaded on board or unloaded from a vessel in bulk or where any such substance is stored in bulk before loading or after unloading, must ensure that such information is immediately available to the emergency services as will enable them to

know: (1) the identity, quantity and location of each such substance which is for the time being on the berth (reg 27(3)(a)); and (2) the nature of the dangers to which each such substance may give rise and the emergency action that should be taken (reg 27(3)(b)). As to references to the carrying, loading or unloading of any substance in bulk see PARA 704 note 8 ante; and as to references to storage in bulk see PARA 706 note 16 ante.

12 For the meaning of 'explosive' see PARA 700 note 6 ante.

13 See the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 27(5). The berth operator must, as soon as practicable after the berthing of a vessel, notify the master of that vessel of emergency arrangements at the berth and the means by which the alarm can be raised, and must provide him with a written notice of the signals to be used in an emergency and of the arrangements for summoning the emergency services: see reg 27(2). For the meaning of 'master' see PARA 700 note 12 ante. For the meaning of 'written' see PARA 605 note 3 ante. The operator of any berth where any dangerous substance (ie any quantity of explosives or 25kg or more of one or more dangerous substances) other than in bulk is being loaded on board or unloaded from a vessel or where any such substance is stored before loading or after unloading, must ensure that such information is immediately available to the emergency services as will enable them to know the identity, quantity and location of each such substance which is for the time being on the berth: see reg 27(4).

14 For the meaning of 'harbour master' see PARA 701 note 8 ante.

15 'Untoward incident' means an incident involving or threatening the containment of a dangerous substance which might, irrespective of where such incident occurs, create in the harbour or harbour area a risk of serious personal injury or a risk to the safety of a vessel: Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 28(1).

16 Ibid reg 28(2).

17 Ibid reg 28(3).

18 Where an operation has been stopped in accordance with ibid reg 28(4), it must not be resumed until such corrective measures have been taken as make it safe to resume the operation and the harbour master has authorised resumption of the operation: reg 28(5).

19 Ibid reg 28(4).

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708. Explosives in harbours and harbour areas.

With certain exceptions¹, explosives² may not be brought into, or carried or handled³ within, a harbour⁴ or harbour area⁵, or loaded on or unloaded⁶ from a vessel⁷ on any part of the coast of Great Britain⁸ or in any tidal water⁹ or within certain territorial waters¹⁰, unless there is in existence an explosives licence¹¹ permitting that activity and the conditions attached to the licence are complied with¹². The explosives licensing system is administered by the Health and Safety Executive¹³.

Steps must be taken to secure explosives against loss, theft or wrongful use¹⁴, and written receipts must be given to record the transfer of explosives¹⁵. When loading of a vessel or a vehicle with explosives has been completed, the master¹⁶ of the vessel or the operator of that vehicle, as the case may be, must ensure that the vessel or vehicle is taken out of the harbour or harbour area as soon as is reasonably practicable unless the harbour master and, where the vessel or vehicle is at a berth, the berth operator otherwise agree¹⁷.

With certain exceptions¹⁸, a harbour craft¹⁹ carrying explosives must not carry passengers²⁰. A person must not bring an electro-explosive device into a harbour or harbour area unless it is so

constructed and packed as to be safe for carriage²¹. Special provision is made for deteriorated explosives²². The harbour authority must keep a record of all explosives (other than shop goods fireworks) handled within a harbour or harbour area or at any place outside a harbour or harbour area as respects which an explosives licence has been granted²³.

1 See the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 33(2) (amended by SI 2005/1082).

2 For the meaning of 'explosive' see PARA 700 note 6 ante.

3 For the meaning of 'handling' see PARA 700 note 2 ante.

4 For the meaning of 'harbour' see PARA 700 note 4 ante.

5 For the meaning of 'harbour area' see PARA 700 note 4 ante.

6 For the meanings of 'loading' and 'unloading' see PARA 700 note 2 ante.

7 For the meaning of 'vessel' see PARA 700 note 2 ante. Certain vessels are excepted: see the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 33(1)(a).

8 For the meaning of 'Great Britain' see PARA 613 note 1 ante.

9 Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 33(1)(a).

10 See *ibid* reg 33(1)(b) (amended by SI 2005/1082). The territorial waters concerned are those to which the Health and Safety at Work etc Act 1974 ss 1-59, 80-82 (as amended) are applied by the Health and Safety at Work etc Act 1974 (Application Outside Great Britain) Order 2001, SI 2001/2127, art 8 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 305): Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 33(1)(b) (as so amended).

11 'Explosives licence' means a licence issued by the Health and Safety Executive for the purposes of *ibid* Pt IX (regs 33-42) (as amended): reg 2(1).

12 *Ibid* reg 34(1).

13 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq. An application for an explosives licence, or for any alteration in the terms of an existing licence, must be made to the Executive, where the application relates to a harbour or harbour area, by the harbour authority or, if he informs the harbour authority of his intention, a berth operator (regs 34(1)(a), (b), 35(1)(a)) or, where it relates to a place outside a harbour or harbour area, by a person having an interest in the activities for which a licence is required (regs 34(1)(c), 35(1)(b)). For the meaning of 'harbour authority' see PARA 700 note 4 ante. For the meaning of 'berth' see PARA 700 note 4 ante; and for the meaning of 'operator' see PARA 701 note 7 ante. As to the procedure for making an application see reg 35(1), Sch 7. As to the considerations which the Executive must take into account see reg 36. As to fees for such applications see the Health and Safety (Fees) Regulations 2006, SI 2006/336.

14 See the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 37(1), (2). Where explosives are dropped overboard (otherwise than intentionally as part of the activities of persons at work) or lost, the person who had previously had custody of them must report the occurrence to the harbour master and either to the berth explosives security officer, if the incident took place at a berth, or to the harbour explosives security officer and must take such steps as are reasonably practicable to recover those explosives: see reg 37(4). For the meaning of 'harbour master' see PARA 701 note 8 ante.

15 See *ibid* reg 37(3). For the meaning of 'written' see PARA 605 note 3 ante.

16 For the meaning of 'master' see PARA 700 note 12 ante.

17 Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 38.

18 As to the exceptions see *ibid* reg 39(2).

19 For the meaning of 'harbour craft' see PARA 704 note 14 ante.

20 Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 39(1).

21 Ibid reg 40.

22 Where in any harbour or harbour area explosives have deteriorated or have undergone any change which might significantly increase the risks attendant upon their carriage and handling within the harbour or harbour area, the person having custody of those explosives must: (1) notify the Health and Safety Executive and the harbour master and, where the explosives are at a berth, the berth operator of the deterioration or change (ibid reg 41(a)); (2) agree with the harbour master any additional precautions to be taken before moving or handling them (reg 41(b)); and (3) take those precautions (reg 41(c)).

23 See ibid regs 33(1), 34(1)(c), 42.

UPDATE

708-710 Explosives in harbours and harbour areas ... Pollution of the harbour by oil etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

708 Explosives in harbours and harbour areas

NOTE 13--SI 2006/336 now the Health and Safety (Fees) Regulations 2009, SI 2009/515.

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709. Enforcement of provisions.

A statutory harbour authority¹ may make in respect of its harbour area² byelaws prohibiting the entry, or regulating the entry, carriage, handling³ and storage, of dangerous substances⁴. However, byelaws must not conflict with the Dangerous Substances in Harbour Areas Regulations 1987⁵ or with any other relevant statutory provision⁶. Byelaws may contain their own provisions for enforcement⁷.

A statutory harbour authority is responsible for enforcing certain provisions⁸ of the Dangerous Substances in Harbour Areas Regulations 1987 in the harbour area against persons other than itself⁹. Otherwise the Health and Safety Executive is responsible for the enforcement of the regulations¹⁰. In any proceedings for an offence of contravening the regulations¹¹ or any byelaw made under the regulations, it is a defence for any person to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence¹². In certain circumstances the Health and Safety Executive may grant exemptions from the regulations¹³.

Any contravention of the regulations, or of byelaws made under the regulations, is an offence under the Health and Safety at Work etc Act 1974¹⁴.

1 For the meaning of 'statutory harbour authority' see PARA 700 note 4 ante.

2 For the meaning of 'harbour area' see PARA 700 note 4 ante.

3 For the meaning of 'handling' see PARA 700 note 2 ante.

4 Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 43(1). Byelaws must be restricted to matters relating to the harbour area: reg 43(3). As to the procedure for making byelaws and bringing them into force see reg 43(1), Sch 6. For the meaning of 'dangerous substance' see PARA 700 note 3 ante.

5 Ie the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37 (as amended): see PARA 700 et seq ante.

6 Ibid reg 43(2).

7 Ibid reg 43(4).

8 Ie ibid Pt II (regs 6-7) (see PARAS 701-702 ante), Pt III (regs 8-15) (see PARAS 703-704 ante), regs 19, 20 (see PARA 705 ante), reg 32(2) (see PARA 706 ante) and reg 38 (see PARA 708 ante).

9 Ibid reg 44(2).

10 Ibid reg 44(1). As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

11 Ie other than an offence under ibid reg 16 (see PARA 705 ante), reg 31(a) (see PARA 706 ante), or reg 32(1) (see PARA 706 ante).

12 Ibid reg 45. As to the standard of proof to be met by the accused see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1370-1371.

13 The Health and Safety Executive may, by a certificate in writing, exempt any person or class of persons from any requirement or prohibition imposed by or under the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37 (as amended), and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing: reg 46(1). For the meaning of 'writing' see PARA 605 note 3 ante. However, the Executive may not grant any such exemption unless, having regard to the circumstances of the case and in particular to: (1) the conditions, if any, which it proposes to attach to the exemption (reg 46(2)(a)); and (2) any other requirements imposed by or under any enactment which apply to the case (reg 46(2)(b)), it is satisfied that neither the health or safety of persons, nor the security of any explosive, likely to be affected by the exemption, will be prejudiced in consequence of it (reg 46(2)). For the meaning of 'explosive' see PARA 700 note 6 ante.

The Secretary of State for Defence may, in the interests of national security by a certificate in writing, exempt from all or any requirements or prohibitions imposed by the regulations: (a) Her Majesty's forces; (b) visiting forces within the meaning of any of the provisions of the Visiting Forces Act 1952 Pt I (ss 1-12) (as amended) (see ARMED FORCES); (c) any headquarters or organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964 (see ARMED FORCES); (d) any person engaged in the carriage, keeping or supply of any military explosives, if that person is under the direct supervision of a representative of the Ministry of Defence: Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 46(3)(a)-(d). Any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time: reg 46(3). As to the Secretary of State for Defence see ARMED FORCES vol 2(2) (Reissue) PARA 2; CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 438 et seq.

14 See the Health and Safety at Work etc Act 1974 s 33(1)(c) (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 424.

UPDATE

708-710 Explosives in harbours and harbour areas ... Pollution of the harbour by oil etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

709-711 Enforcement of provisions ... Environmental duties of harbour authorities

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

709 Enforcement of provisions

NOTE 4--SI 1987/37 Sch 6 amended: SI 2008/960.

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(iv) Pollution

710. Pollution of the harbour by oil etc.

The statutory restriction on the dumping of substances and articles in the sea without a licence is discussed elsewhere in this title¹. It is also a statutory offence for any person to throw or put any ballast, earth, ashes, stones or other thing into a harbour or dock². Subject to a number of exceptions and defences, the discharge of oil or a mixture containing oil, and the discharge from ships of certain chemicals³, into waters which include those of ports and harbours are prohibited⁴.

Notice must be given to the harbour master⁵ (or if there is no harbour master to the harbour authority⁶) before oil is transferred between sunset and sunrise to or from a ship in any harbour⁷. If any oil or mixture containing oil is discharged from a ship into the waters of a harbour, or is found to be escaping or to have escaped from a ship into any such waters, the owner or master⁸ of the ship must forthwith report the occurrence to the harbour master, or to the harbour authority if there is no harbour master, stating whether the occurrence is a discharge or an escape⁹. The harbour master, for the purpose of ascertaining the circumstances relating to an alleged discharge of oil or a mixture containing oil into a harbour from a ship in the harbour, may board the ship and make such examination and investigation as he considers necessary and may require the production, and take copies, of relevant documents¹⁰. If a harbour master has reason to believe that a ship which he believes proposes to enter or leave the harbour does not comply with specified requirements¹¹ he must immediately report the matter to the Secretary of State¹² who, if satisfied that the ship presents an unreasonable threat to the marine environment, may deny the ship entry to or exit from United Kingdom ports and off-shore terminals¹³. Where a harbour master has reason to believe that the master or owner of a ship has committed an offence by the discharge from the ship of oil, or a mixture containing oil, into the waters of a harbour he may detain the ship¹⁴. Where an accident has occurred to or in a ship, which he considers has created a risk to safety or a risk of pollution by a hazardous substance, the Secretary of State may give a direction in respect of the ship for the purpose of removing or reducing the risk¹⁵.

Certain harbour authorities and operators of oil-handling facilities¹⁶ are required to have oil pollution emergency plans¹⁷. A harbour master or other person having charge of a harbour and any individual having charge of an oil-handling facility (except those which are pipelines) who observes, or is made aware of, any event involving a discharge or probable discharge of oil, or the presence of oil in the sea, must without delay report the event, or the presence of oil, to Her Majesty's Coastguard¹⁸. Where a harbour authority incurs expenditure in clearing up an oil spill it will generally be able to recover the cost from the owner of the ship even in the absence

of negligence on the part of the master or crew¹⁹ although the owner may be entitled to limit his liability²⁰.

Every harbour authority and terminal operator must provide adequate waste reception facilities to meet the needs of ships normally using the harbour or terminal in question without causing undue delay to ships and must prepare a waste management plan with respect to the provision and use of those facilities²¹.

There are statutory restrictions on the emission of dark smoke from vessels in all waters navigated by sea-going ships which are within the seaward limits of the territorial waters of the United Kingdom and are contained within any port, harbour, river, estuary, haven, dock, canal or other place so long as a person or body of persons is empowered under any Act to make charges in respect of vessels entering it or using facilities in it²³.

1 le in the context of the construction of harbour works and the deposit of dredged spoil: see the Food and Environment Protection Act 1985; para 660 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 525 et seq.

2 Harbours, Docks and Piers Clauses Act 1847 s 73. For the meaning of 'harbour or dock' see PARA 663 note 3 ante. The provisions of the Harbours, Docks and Piers Clauses Act 1847 only apply where they are incorporated in the local legislation of a harbour authority: see PARA 602 ante. The penalty on conviction for this offence is a fine not exceeding level 1 on the standard scale: s 73 (amended by virtue of the Criminal Justice Act 1982 s 46). In the case of harbours belonging to Associated British Ports (see PARA 622 ante), the maximum penalty is level 3 on the standard scale: British Transport Docks Act 1981 ss 17, 20, Sch 1 (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 605 note 13 ante. Nothing in the Harbours, Docks and Piers Clauses Act 1847 prejudices or prevents any person from adopting otherwise lawful measures for recovering land which has been lost or severed by reason of the overflowing or washing of any navigable river, or for protecting his land from future loss or damage by such action: see s 73.

3 See the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, regs 12(4), 13(4); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARAS 375, 376.

4 See eg the Merchant Shipping Act 1995 s 131 (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 425 et seq); the Prevention of Oil Pollution Act 1971 s 2 (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 348 et seq); and the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154 (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 365 et seq). As to pollution generally see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 347 et seq; ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 270 et seq.

5 For the meaning of 'harbour master' in this context see the Merchant Shipping Act 1995 s 151(1); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 429. As to harbour masters in general see PARA 690 et seq ante.

6 For the meaning of 'harbour authority' in this context see *ibid* s 151(1); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 428.

7 See *ibid* s 135 (as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 429.

8 For the meaning of 'master' in this context see *ibid* s 313(1); and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 424.

9 See *ibid* s 136; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 430.

10 See *ibid* s 259(6); and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 70.

11 le the requirements of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154 (as amended).

12 As to the Secretary of State see PARA 603 ante.

13 See the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154, reg 35 (as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 399. For the meaning of 'United Kingdom' see PARA 613 note 1 ante.

14 See the Merchant Shipping Act 1995 s 144 (as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 434.

15 See *ibid* s 108A, Sch 3A (as added); and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 686.

16 See the harbour authorities and operators of oil-handling facilities to which the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998, SI 1998/1056 (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 360) apply: see reg 4(1).

17 See *ibid* reg 4. 'Oil pollution emergency plan' means a contingency plan (other than the National Contingency Plan) setting out arrangements for responding to incidents which cause or may cause marine pollution by oil, with a view to preventing such pollution or reducing or minimising its effect; and 'National Contingency Plan' means the national plan for pollution emergencies prepared by the Secretary of State pursuant to the Merchant Shipping Act 1995 s 293(2)(za) (as added) (see PROTECTION OF THE ENVIRONMENT AND PUBLIC HEALTH): Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998, SI 1998/1056, reg 2.

18 See *ibid* reg 6. As to Her Majesty's Coastguard see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 57.

19 See the Merchant Shipping Act 1995 ss 153, 154 (both as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARAS 443, 444. There are similar provisions in respect of pollution by bunker oil: see s 153A (as added).

20 See *ibid* s 157 (as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 447.

21 See the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003, SI 2003/1809; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 347 *et seq*. As to waste management generally see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH.

23 See the Clean Air Act 1993 ss 1, 44; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 575.

UPDATE

708-710 Explosives in harbours and harbour areas ... Pollution of the harbour by oil etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

709-711 Enforcement of provisions ... Environmental duties of harbour authorities

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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(v) Environmental Duties of Harbour Authorities

711. Environmental duties of harbour authorities.

It is the duty of a harbour authority¹ in formulating or considering any proposals relating to its functions² under any enactment³ to have regard to:

- 127 (1) the conservation of the natural beauty of the countryside and of flora, fauna and geological or physiographical features of special interest⁴;
- 128 (2) the desirability of preserving for the public any freedom of access to places of natural beauty⁵; and
- 129 (3) the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural or historic interest⁶,

and to take into account any effect which the proposals may have on the natural beauty of the countryside, flora, fauna or any such feature or facility⁷. Duties or powers (including powers to make byelaws⁸) for the conservation of the natural beauty of all or any part of a harbour⁹ or of any of the fauna, flora or geological or physiographical features in the harbour and all other natural features may be imposed or conferred on the harbour authority by a harbour revision order¹⁰. Harbour authorities may be affected by, and have duties imposed on them in connection with, the designation of certain areas for environmental reasons¹¹. The duties of harbour authorities for the prevention of pollution are discussed elsewhere in this title¹².

1 For the meaning of 'harbour authority' see PARA 619 ante.

2 For the meaning of 'functions' see PARA 605 note 2 ante.

3 For the meaning of 'enactment' see PARA 628 note 26 ante.

4 Harbours Act 1964 s 48A(a) (s 48A added by the Transport and Works Act 1992 s 63(1), Sch 3 para 6).

5 Harbours Act 1964 s 48A(b) (as added: see note 4 supra). As to the designation of areas of outstanding natural beauty see the Countryside and Rights of Way Act 2000 s 82; and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 658 et seq.

6 Harbours Act 1964 s 48A(c) (as added: see note 4 supra). As to the designation of sites of archaeological importance see the Ancient Monuments and Archaeological Areas Act 1979 s 33; and NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1043 et seq. 'Interest' may be considered in the context of neighbouring buildings: *Earl Iveagh v Minister of Housing and Local Government* [1962] 2 QB 147, [1961] 3 All ER 98.

7 Harbours Act 1964 s 48A (as added: see note 4 supra).

8 As to the power of a harbour authority to make byelaws see PARAS 687-688 ante.

9 For the meaning of 'harbour' see PARA 611 ante.

10 See the Harbours Act 1964 s 14 (as amended), Sch 2 para 16A (as added); and PARA 628 ante. For the meaning of 'harbour revision order' see PARA 628 ante.

11 The areas in question are designated under the provisions of the Wildlife and Countryside Act 1981 or of the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716 (as amended). The designated areas include European marine sites: see regs 2, 10. As to designations under the Wildlife and Countryside Act 1981 and the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716 (as amended) see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 728 et seq. As to the protection of European sites in relation to works in harbours see PARA 665 ante.

12 See PARA 710 ante.

UPDATE

709-711 Enforcement of provisions ... Environmental duties of harbour authorities

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

711 Environmental duties of harbour authorities

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(5) PROTECTION OF HARBOUR AREAS AGAINST ACTS OF VIOLENCE/(i) In general/712. Purposes to which the statutory provisions apply.

(5) PROTECTION OF HARBOUR AREAS AGAINST ACTS OF VIOLENCE

(i) In general

712. Purposes to which the statutory provisions apply.

The purposes to which Part III of the Aviation and Maritime Security Act 1990¹ applies are the protection against acts of violence²:

- 130 (1) of ships³, and of persons⁴ or property⁵ on board ships⁶; and
- 131 (2) of harbour areas⁷, of such persons as are at any time present in any part of a harbour area and of any such property as forms part of a harbour area or is at any time, whether permanently or temporarily, in any part of a harbour area⁸.

Her Majesty may by Order in Council⁹ make provision for extending any of the provisions of Part III of the Aviation and Maritime Security Act 1990¹⁰, with such exceptions, adaptations or modifications as may be specified in the order, to any of the Channel Islands, the Isle of Man or any colony¹¹.

Any expenses of the Secretary of State¹² under Part III of the Aviation and Maritime Security Act 1990, and any increase attributable to those provisions in the sums so payable under any other Act¹³, are to be paid out of money provided by Parliament¹⁴.

1 The Aviation and Maritime Security Act 1990 Pt III (ss 18-46) (as amended): see PARA 713 et seq post.

2 'Act of violence' means any act (whether actual or potential, and whether done or to be done in the United Kingdom or elsewhere) which either, being an act done in Great Britain constitutes, or if done in Great Britain would constitute, the offence of murder, attempted murder, manslaughter, culpable homicide or assault or an offence under the Offences Against the Person Act 1861 ss 18, 20-24, 28 or 29 (all as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 118 et seq), under the Explosive Substances Act 1883 s 2 (as substituted) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 127) or under the Criminal Damage Act 1971 s 1 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 334): Aviation and Maritime Security Act 1990 ss 18(2), 46(1). For the meanings of 'United Kingdom' and 'Great Britain' see PARA 613 note 1 ante.

3 'Ship' includes hovercraft and every other description of vessel used in navigation: ibid s 46(1).

4 For the meaning of 'person' see PARA 605 note 4 ante.

5 'Property' includes any land, buildings or works, any ship or vehicle and any baggage, cargo or other article of any description; and 'article' includes any substance, whether in solid or liquid form or in the form of a gas or vapour: Aviation and Maritime Security Act 1990 s 46(1). 'Land' includes buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land: Interpretation Act 1978 s 5, Sch 1.

6 Aviation and Maritime Security Act 1990 s 18(1)(a).

7 'Harbour area' means: (1) the aggregate of: (a) any harbour in the United Kingdom in respect of which there is a harbour authority within the meaning of the Merchant Shipping Act 1995 (see PARA 619 ante) (Aviation and Maritime Security Act 1990 s 18(3)(a)(i) (s 18(3) substituted by the Merchant Shipping and Maritime Security Act 1997 s 25, Sch 4 paras 1, 2)); and (b) any land which is adjacent to such a harbour and which is either land occupied by the harbour authority or land in respect of which the harbour authority has functions of improvement, maintenance or management (Aviation and Maritime Security Act 1990 s 18(3)(a)(ii) (as so substituted)); or (2) any hoverport which does not form part of any area which falls within heads (1)(a), (b) supra (s 18(3)(b) (as so substituted)). 'Harbour' has the same meaning as in the Merchant Shipping Act 1995 (see PARA 611 ante): Aviation and Maritime Security Act 1990 s 46(1) (definition substituted by the Merchant Shipping and Maritime Security Act 1997 Sch 4 para 11(2)(a)). 'Hoverport' means any area, whether on land or elsewhere, which is designed, equipped, set apart or commonly used for affording facilities for the arrival and departure of hovercraft: Hovercraft Act 1968 s 4(1); definition applied by the Aviation and Maritime Security Act 1990 s 46(1).

8 Ibid s 18(1)(b). As to the protection of ships against acts of violence see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1218 et seq.

9 The power to make Orders in Council is exercisable by statutory instrument: see the Statutory Instruments Act 1946 s 1(1); and STATUTES vol 44(1) (Reissue) PARA 1503.

10 The power also extends to the Aviation and Maritime Security Act 1990 s 50: see PARA 736 post.

11 Ibid s 51(1). For the meaning of 'colony' see the Interpretation Act s 5, Sch 1; and STATUTES vol 44(1) (Reissue) PARA 1383. See also COMMONWEALTH vol 13 (2009) PARA 705.

12 As to the Secretary of State see PARA 603 ante.

13 For the meaning of 'Act' see PARA 628 note 26 ante.

14 Aviation and Maritime Security Act 1990 s 52. As to the provision of money by Parliament see PARLIAMENT vol 78 (2010) PARA 804.

UPDATE

712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(5) PROTECTION OF HARBOUR AREAS AGAINST ACTS OF VIOLENCE/ (ii) Powers of the Secretary of State/713. Power to require information.

(ii) Powers of the Secretary of State

713. Power to require information.

The Secretary of State¹ may, by notice in writing² served³ on any of the following persons⁴:

- 132 (1) the owner⁵, charterer, manager, or master⁶ of a British ship⁷ or any other ship which is in, or is likely to enter, a harbour area⁸;
- 133 (2) a harbour authority⁹;
- 134 (3) any person who carries on harbour operations¹⁰ in a harbour area¹¹; and
- 135 (4) any person who is permitted to have access to a restricted zone¹² of a harbour area for the purposes of his business¹³,

require that person to provide the Secretary of State with such information specified in the notice as the Secretary of State may require in connection with the exercise by him of his functions under the statutory provisions¹⁴ relating to the protection of ships and harbour areas against acts of violence¹⁵. The notice may also require the person on whom it is served to furnish further information if at any time the information (or further information) previously furnished becomes inaccurate by any change of circumstances¹⁶.

Any person who without reasonable excuse fails to comply with a requirement imposed on him by any such notice, or in furnishing any information required makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, commits an offence¹⁷.

1 As to the Secretary of State see PARA 603 ante.

2 For the meaning of 'writing' see PARA 605 note 3 ante.

3 As to the service of documents see PARA 738 post.

4 For the meaning of 'person' see PARA 605 note 4 ante.

5 'Owner', in relation to a ship registered in the United Kingdom or in any other country, means registered owner: Aviation and Maritime Security Act 1990 s 46(1). For the meaning of 'ship' see PARA 712 note 3 ante. For the meaning of 'United Kingdom' see PARA 613 note 1 ante. See also note 7 infra.

6 'Master' has the same meaning as in the Merchant Shipping Act 1995 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 424): Aviation and Maritime Security Act 1990 s 46(1) (definition amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 88(1), (6)(b)).

7 Aviation and Maritime Security Act 1990 s 19(1)(a)(i). 'British ship' means a ship which is registered in the United Kingdom under the Merchant Shipping Act 1995 Pt II (ss 8-23) (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 245 et seq) or under an Order in Council under the Hovercraft Act 1968 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 382 et seq) or is not registered under the law of any country and is entitled to be registered in the United Kingdom under the Merchant Shipping Act 1995 Pt II: Aviation and Maritime Security Act 1990 s 46(1) (definition amended by the Merchant Shipping Act 1995 Sch 13 para 88(1), (6)(a)).

8 Aviation and Maritime Security Act 1990 s 19(1)(a)(ii). For the meaning of 'harbour area' see PARA 712 note 7 ante.

9 Ibid s 19(1)(b). 'Harbour authority' means: (1) a harbour authority within the meaning of the Merchant Shipping Act 1995 (see PARA 619 ante); or (2) the manager of any hoverport which does not form part of an area mentioned in the Aviation and Maritime Security Act 1990 s 18(3)(a)(i) or (ii) (see PARA 712 note 7 ante): s 46(1) (definition substituted by the Merchant Shipping and Maritime Security Act 1997 s 25, Sch 4 para 11(2)(b)). For the meaning of 'hoverport' see PARA 712 note 7 ante.

10 'Harbour operations' means: (1) the marking or lighting of a harbour or any part of it; or (2) the berthing or dry docking of a ship or the towing or moving of a ship into or out of or within the harbour area; or (3) the transportation, handling or warehousing of goods within the harbour area; or (4) the embarking, disembarking or movement of passengers within the harbour area: Aviation and Maritime Security Act 1990 s 46(1) (definition substituted by the Merchant Shipping and Maritime Security Act 1997 Sch 4 paras 1, 11(1), (2)(c)). For the meaning of 'harbour' see PARA 611 ante.

11 Aviation and Maritime Security Act 1990 s 19(1)(c).

12 For the meaning of 'restricted zone' see PARA 714 note 5 post. For these purposes, a person is permitted to have access to a restricted zone of a harbour area if he is permitted to enter that zone or if arrangements exist for permitting any of his employees or agents to enter that zone: *ibid* s 46(3). 'Employee', in relation to a body corporate, includes officer: s 46(1). As to bodies corporate see COMPANIES; CORPORATIONS.

13 *Ibid* s 19(1)(d).

14 *Ie* *ibid* Pt III (ss 18-46) (as amended).

15 *Ibid* s 19(1). A notice under s 19(1) must specify a date, not earlier than seven days from the date on which the notice is served, before which the information required by the notice must be furnished: see s 19(2). A notice served on a person under s 19(1) may at any time be revoked by a notice in writing served on him by the Secretary of State (s 19(7)(a)) or be varied by a further notice served under s 19(1) (s 19(7)(b)). For the meaning of 'act of violence' see PARA 712 note 2 ante.

16 *Ibid* s 19(3). The notice must specify a date, not earlier than seven days from the date on which the change of circumstance occurs, before the end of which the information must be furnished: see s 19(4). 'Change of circumstances' includes the taking of any further measures for purposes to which Pt III (as amended) applies, or the alteration or discontinuance of any measures already being taken: s 19(3). As to the purposes to which Pt III (as amended) applies see PARA 712 ante.

17 *Ibid* s 19(5). The penalty for such an offence is, on summary conviction, a fine not exceeding the statutory maximum (s 19(6)(a)); on conviction on indictment, a fine or imprisonment for a term not exceeding two years or both (s 19(6)(b)). As to offences by bodies corporate see PARA 736 post.

The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140. For the meaning of 'prescribed sum' see PARA 605 note 15 ante.

UPDATE

712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(5) PROTECTION OF HARBOUR AREAS AGAINST ACTS OF VIOLENCE/ (ii) Powers of the Secretary of State/714. Designation of restricted zones of harbour areas.

714. Designation of restricted zones of harbour areas.

A harbour authority¹ may, and must if so requested in writing² by the Secretary of State³, apply to the Secretary of State for the designation of the whole or any part of the harbour area⁴ as a restricted zone⁵ for the purposes of the statutory provisions relating to the protection of ships and harbour areas against acts of violence⁶. A harbour operator⁷ may, and must if so requested in writing by the Secretary of State, apply to him for the designation of the whole or any part of the operating area as a restricted zone for those purposes⁸. If a person⁹ is requested in writing by the Secretary of State to make an application within a specified period but fails to do so within that period, the Secretary of State may designate the whole or any part of the harbour area or, as the case may be, of the operating area as a restricted zone¹⁰.

If the Secretary of State approves the application, with or without modifications¹¹, he must designate the restricted zone accordingly¹². The whole or any part of a harbour area or, as the case may be, of an operating area may be designated as a restricted zone, or part of a restricted zone, for specified days or times of day only¹³. The Secretary of State must give notice¹⁴ of any designation, and the designation takes effect on the giving of the notice¹⁵.

A person must not:

- 136 (1) go, with or without a vehicle or vessel, onto or into any part of a restricted zone of a harbour area except with the permission of the competent authority¹⁶, or of a person acting on behalf of that authority, and in accordance with any conditions subject to which that permission is for the time being granted¹⁷; or
- 137 (2) remain in any part of such a restricted zone after being requested to leave by the competent authority or a person acting on behalf of that authority¹⁸.

A person who contravenes either of these prohibitions without lawful authority or reasonable excuse is guilty of an offence¹⁹.

1 For the meaning of 'harbour authority' see PARA 713 note 9 ante.

2 For the meaning of 'writing' see PARA 605 note 3 ante.

3 As to the Secretary of State see PARA 603 ante.

4 For the meaning of 'harbour area' see PARA 712 note 7 ante.

5 'Restricted zone' means an area designated under the Aviation and Maritime Security Act 1990 s 20 (as amended); and references to a restricted zone of a harbour area include references to a restricted zone which is or is part of an operating area: see s 46(2A) (added by the Merchant Shipping and Maritime Security Act 1997 s 25, Sch 4 paras 1, 11(1), (3)). 'Operating area' means, in relation to a harbour operator (see note 7 infra) so much of the harbour area as is under his control: Aviation and Maritime Security Act 1990 s 20(9) (as added: see note 7 infra).

6 Ibid s 20(1). The statutory provisions relating to the protection of ships and harbours against acts of violence are contained in Pt III (ss 18-46) (as amended): see s 18; and PARA 712 ante. For the meaning of 'ship' see PARA 712 note 3 ante; and for the meaning of 'act of violence' see PARA 712 note 2 ante.

7 'Harbour operator' means a person who: (1) carries on harbour operations in a harbour area; and (2) is designated for the purposes of ibid Pt III (ss 18-46) (as amended) by an order made by the Secretary of State: ss 20(9), 46(1) (s 20(9) added, and the definition in s 46(1) substituted, by the Merchant Shipping and Maritime Security Act 1997 Sch 4 paras 1, 3(1), (9), 11(1), (2)). An order so made may be revoked by a subsequent order: Aviation and Maritime Security Act 1990 s 20(10) (added by the Merchant Shipping and Maritime Security Act 1997 Sch 4 paras 1, 3(1), (9)). At the date at which this volume states the law no such order had been made.

8 Aviation and Maritime Security Act 1990 s 20(1A) (added by the Merchant Shipping and Maritime Security Act 1997 Sch 4 paras 1, 3(1), (2)).

9 For the meaning of 'person' see PARA 605 note 4 ante.

10 Aviation and Maritime Security Act 1990 s 20(5) (amended by the Merchant Shipping and Maritime Security Act 1997 Sch 4 paras 1, 3(1), (5)).

11 Before approving an application with modifications, the Secretary of State must consult the applicant: Aviation and Maritime Security Act 1990 s 20(4) (amended by the Merchant Shipping and Maritime Security Act 1997 Sch 4 paras 1, 3(1), (4)). As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2100) PARA 627.

12 Aviation and Maritime Security Act 1990 s 20(3) (amended by the Merchant Shipping and Maritime Security Act 1997 Sch 4 paras 1, 3(1), (3)). Where the whole or any part of a harbour area or, as the case may be, of an operating area has been designated as a restricted zone, the provisions of the Aviation and Maritime Security Act 1990 s 20(1)-(7) (as amended) also have effect in relation to any variation of the designation, and the designation may at any time be revoked by the Secretary of State: s 20(8) (amended by the Merchant Shipping and Maritime Security Act 1997 Sch 4 paras 1, 3(1), (8)).

13 Aviation and Maritime Security Act 1990 s 20(6) (amended by the Merchant Shipping and Maritime Security Act 1997 Sch 4 paras 1, 3(1), (6)).

14 le to the person who made, or was requested to make, the application: see the Aviation and Maritime Security Act 1990 s 20(7) (amended by the Merchant Shipping and Maritime Security Act 1997 Sch 4 paras 1, 3(1), (7)). As to the service of documents see PARA 738 post.

15 Aviation and Maritime Security Act 1990 s 20(7) (as amended: see note 14 supra).

16 The competent authority is: (1) if the zone was designated on the application of a harbour authority, that authority; and (2) if the zone was designated on the application of a harbour operator, that operator: *ibid* s 39(2B) (s 39(2A), (2B) added by the Merchant Shipping and Maritime Security Act 1997 Sch 4 paras 1, 10(1), (3)).

17 Aviation and Maritime Security Act 1990 s 39(1)(a) (s 39(1)(a), (b) amended by the Merchant Shipping and Maritime Security Act 1997 Sch 4 paras 1, 10(1), (2)). This prohibition does not apply unless it can be proved that, at the material time, notices stating that the area concerned was a restricted zone were posted so as to be readily seen and read by persons entering the restricted zone: Aviation and Maritime Security Act 1990 s 39(2).

18 *Ibid* s 39(1)(b) (as amended: see note 17 supra). A constable or any person acting on behalf of the competent authority may use such force as is reasonable in the circumstances to remove from a restricted zone a person remaining in it in contravention of this prohibition: s 39(2A) (as added: see note 16 supra). 'Constable' includes any person having the powers and privileges of a constable: s 46(1). As to the office of constable see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

19 *Ibid* s 39(3). The penalty for such an offence is, on summary conviction, a fine not exceeding level 5 on the standard scale: s 39(3). As to the standard scale see PARA 605 note 13 ante.

UPDATE

712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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715. Sea cargo agents.

The Secretary of State¹ may by regulations² make provision, for the purposes to which the statutory provisions relating to the protection of ships³ and harbour areas⁴ against acts of violence apply⁵, in relation to sea cargo agents⁶. Such regulations may in particular provide:

- 138 (1) for the maintenance of a list of approved sea cargo agents⁷;
- 139 (2) for the treating of approved sea cargo agents as persons who are permitted to have access to a restricted zone of a harbour area⁸ for the purposes of the activities of a business⁹;
- 140 (3) for the amendment of specified statutory provisions¹⁰ by the inclusion of references to sea cargo agents included on any such list¹¹;
- 141 (4) for the making of different provision in relation to different classes of sea cargo agents¹²;
- 142 (5) for the making of different provision for different cases¹³; and

143 (6) for the making of such incidental, supplementary or transitional provisions as the Secretary of State considers necessary or expedient in consequence of any provision made by the regulations¹⁴.

1 As to the Secretary of State see PARA 603 ante.

2 Before making any regulations under the Aviation and Maritime Security Act 1990 s 41, the Secretary of State must consult organisations representing persons affected by the proposed regulations: s 41(3). For the meaning of 'person' see PARA 605 note 4 ante. As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2100) PARA 627. Any statutory instrument containing regulations under s 41 is subject to annulment in pursuance of a resolution of either House of Parliament: s 41(4). At the date at which this volume states the law no such regulations had been made.

3 For the meaning of 'ship' see PARA 712 note 3 ante.

4 For the meaning of 'harbour area' see PARA 712 note 7 ante.

5 Ie for the purposes to which the Aviation and Maritime Security Act 1990 Pt III (ss 18-46) (as amended) applies: see s 18; and PARA 712 ante. For the meaning of 'act of violence' see PARA 712 note 2 ante.

6 Ibid s 41(1). 'Sea cargo agents' are persons who carry on a business of handling cargo which is to be delivered (whether by them or any other person) to the owner, charterer or manager of any ship for carriage by sea from any harbour area: s 41(1). 'Cargo' includes stores and mail; and 'stores' means any goods intended for sale or use in a ship, including fuel and spare parts and other articles of equipment, whether or not for immediate fitting: s 41(6). 'Carriage by sea' does not include carriage by any ship in naval, customs or police service: s 41(6). For the meaning of 'owner' see PARA 713 note 5 ante. As to the exemptions that may be included in any direction given under s 21 (see PARA 716 post) and s 24 (see PARA 719 post) see s 41(5).

7 See ibid s 41(2)(a). The regulations may specify criteria for including names on, or removing them from, the list: see s 41(2)(a).

8 For the meaning of 'person permitted to have access to a restricted zone of a harbour area' see PARA 713 note 12 ante. For the meaning of 'restricted zone' see PARA 714 note 5 ante.

9 See the Aviation and Maritime Security Act 1990 s 41(2)(b).

10 Ie ibid s 37(2) (see PARA 732 post) and s 38(3) (see PARA 733 post).

11 Ibid s 41(2)(c).

12 Ibid s 41(2)(d).

13 Ibid s 41(2)(e).

14 Ibid s 41(2)(f).

UPDATE

712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(5) PROTECTION OF HARBOUR AREAS AGAINST ACTS OF VIOLENCE/ (ii) Powers of the Secretary of State/716. Power to impose restrictions in relation to ships.

716. Power to impose restrictions in relation to ships.

For the purposes to which the statutory provisions relating to the protection of ships¹ and harbour areas² against acts of violence apply³, the Secretary of State⁴ may give a direction⁵ in writing⁶ to a harbour authority⁷ or to the owner⁸, charterer, manager or master⁹ of a British ship¹⁰, or of any other ship which is in a harbour area, requiring that person:

- 144 (1) not to cause or permit¹¹ persons or property to go or be taken on board any ship to which the direction relates, or to come or be brought into proximity to any such ship, unless such searches of those persons or that property as are specified in the direction have been carried out by constables¹² or by other persons of a description specified in the direction¹³; or
- 145 (2) not to cause or permit any such ship to go to sea unless such searches of the ship as are specified in the direction have been carried out by constables or by other persons of a description so specified¹⁴.

For these purposes the Secretary of State may give a direction in writing to such an owner, charterer, manager or master of a British ship or any other ship which is in a harbour area, requiring him not to cause or permit the ship to go to sea unless such modifications or alterations of the ship, or of apparatus or equipment installed in or carried on board the ship, as are specified in the direction have first been carried out, or such additional apparatus or equipment as is so specified is first installed in or carried on board the ship¹⁵.

Subject to certain statutory provisions¹⁶, a direction given to an owner, charterer or manager of a ship under the above provisions¹⁷ may be given so as to relate either to all the ships of which at the time when the direction is given or at any subsequent time he is the owner, charterer or manager or only to one or more such ships specified in the direction¹⁸. A direction given to a harbour authority¹⁹ may be given so as to relate either to all ships which at the time when the direction is given or at any subsequent time are in any part of the harbour area, or to a class of such ships specified in the direction²⁰.

Any person who, without reasonable excuse, fails to comply with a direction is guilty of an offence²¹. Where a person is convicted of such an offence then, if without reasonable excuse the failure in respect of which he was convicted is continued after the conviction, he is guilty of a further offence²².

1 For the meaning of 'ship' see PARA 712 note 3 ante.

2 For the meaning of 'harbour area' see PARA 712 note 7 ante.

3 For the purposes to which the Aviation and Maritime Security Act 1990 Pt III (ss 18-46) (as amended) applies: see s 18; and PARA 712 ante. For the meaning of 'act of violence' see PARA 712 note 2 ante.

4 As to the Secretary of State see PARA 603 ante.

5 Subject to the Aviation and Maritime Security Act 1990 ss 22-46 (as amended) (see PARA 717 et seq post), a direction under s 21(1) may be given so as to relate: (1) either to all persons or only to one or more persons, or persons of one or more descriptions, specified in the direction (s 21(5)(a)); and (2) either to property of every description or only to particular property, or property of one or more descriptions, so specified (s 21(5)(b)). A direction may be given under s 21 to a person appearing to the Secretary of State to be about to become such a person as is mentioned in s 21(1) or (2) (see the text to note 15 infra); but a direction given to a person by virtue of this provision does not take effect until he becomes a person so mentioned: s 21(7). In relation to a direction so given, the provisions of s 21(1)-(6) apply with the necessary modifications: s 21(7). For the meaning of 'person' see PARA 605 note 4 ante; and for the meaning of 'property' see PARA 712 note 5 ante. As to general provisions relating to directions and their enforcement see PARA 720 et seq post. As to the application of s 21 to sea cargo agents see PARA 715 ante.

6 For the meaning of 'writing' see PARA 605 note 3 ante.

- 7 For the meaning of 'harbour authority' see PARA 713 note 9 ante.
- 8 For the meaning of 'owner' see PARA 713 note 5 ante.
- 9 For the meaning of 'master' see PARA 713 note 6 ante.
- 10 For the meaning of 'British ship' see PARA 713 note 7 ante.
- 11 Subject to the provisions of the Aviation and Maritime Security Act 1990 ss 22-46 (as amended) (see PARA 717 et seq post), a direction given under s 21 to any person not to cause or permit anything to be done is to be construed as requiring him to take all such steps as in any particular circumstances are practicable and necessary to prevent that thing from being done: s 21(6).
- 12 For the meaning of 'constable' see PARA 714 note 18 ante.
- 13 Aviation and Maritime Security Act 1990 s 21(1)(a).
- 14 Ibid s 21(1)(b).
- 15 Ibid s 21(2). See also s 21(7); and note 5 supra. In giving any direction under s 21(2), the Secretary of State must allow, and must specify in the direction, such period as appears to him to be reasonably required for carrying out the modifications or alterations or installing or obtaining the additional apparatus or equipment; and the direction does not take effect before the end of the period so specified: s 21(3).
- 16 Ie subject to ibid ss 22-46 (as amended): see PARA 717 et seq post.
- 17 Ie under ibid s 21(1) or (2): see the text to notes 1-15 supra.
- 18 Ibid s 21(4).
- 19 Ie under ibid s 21(1) or (2): see the text to notes 1-15 supra.
- 20 Ibid s 21(4).
- 21 Ibid s 21(8). The penalty for such an offence is, on summary conviction, a fine not exceeding the statutory maximum (s 21(8)(a)); and on conviction on indictment, a fine or imprisonment for a term not exceeding two years or both (s 21(8)(b)). As to the statutory maximum see PARA 713 note 17 ante. As to offences by bodies corporate see PARA 736 post.
- 22 Ibid s 21(9). The penalty for such an offence is, on summary conviction, a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues: s 21(9). As to the standard scale see PARA 605 note 13 ante.

UPDATE

712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(5) PROTECTION OF HARBOUR AREAS AGAINST ACTS OF VIOLENCE/ (ii) Powers of the Secretary of State/717. Power to require harbour authorities to promote searches in harbour areas.

717. Power to require harbour authorities to promote searches in harbour areas.

For the purposes to which the statutory provisions relating to the protection of ships¹ and harbour areas² against acts of violence apply³, the Secretary of State⁴ may give a direction⁵ in writing⁶ to a harbour authority⁷ or a harbour operator⁸ to use its best endeavours to secure that searches of the harbour area or the operating area⁹ (as the case may be), of any ship in that area, and of persons and property¹⁰ in that area are carried out by constables¹¹ or by other persons of a description specified in the direction¹².

Where such a direction is in force, any constable or other person specified in the direction who has reasonable cause to suspect that any of certain specified articles¹³ is in, or may be brought into, any part of the harbour area or operating area may, without a warrant¹⁴, search any part of that area or any ship, vehicle, goods, other moveable property, or person for the time being in any part of that area¹⁵. For that purpose, he may enter any buildings or works in the harbour area or the operating area (as the case may be) or enter upon any land¹⁶ in that area, if need be by force¹⁷; he may go on board any such ship and inspect it¹⁸; and he may stop any such ship and prevent it from being moved¹⁹; and may stop any such vehicle, goods, property or person and detain it or him for as long as necessary for that purpose²⁰.

Any person²¹ who without reasonable excuse fails to comply with such a direction²² or who intentionally obstructs a person acting in the exercise of a power so conferred on him²³ commits an offence²⁴. Where a person is convicted of the offence of failure to comply with a direction²⁵, if without reasonable excuse the failure in respect of which he was convicted is continued after the conviction, he is guilty of a further offence²⁶.

1 For the meaning of 'ship' see PARA 712 note 3 ante.

2 For the meaning of 'harbour area' see PARA 712 note 7 ante.

3 In the purposes to which the Aviation and Maritime Security Act 1990 Pt III (ss 18-46) (as amended) applies: see s 18; and PARA 712 ante. For the meaning of 'act of violence' see PARA 712 note 2 ante.

4 As to the Secretary of State see PARA 603 ante.

5 As to general provisions relating to directions and their enforcement see PARA 720 et seq post.

6 For the meaning of 'writing' see PARA 605 note 3 ante.

7 Aviation and Maritime Security Act 1990 s 22(1)(a). For the meaning of 'harbour authority' see PARA 713 note 9 ante.

8 Ibid s 22(1)(b). For the meaning of 'harbour operator' see PARA 714 note 7 ante.

9 For the meaning of 'operating area' see PARA 714 note 5 ante.

10 for the meaning of 'property' see PARA 712 note 5 ante.

11 For the meaning of 'constable' see PARA 714 note 18 ante.

12 Aviation and Maritime Security Act 1990 s 22(1), (2), (2A) (s 22(1) amended, and s 22(2A) added, by the Merchant Shipping and Maritime Security Act 1997 s 25, Sch 4 paras 1, 4(1), (2), (3)). As to the application of the Aviation and Maritime Security Act 1990 s 22 (as amended) to sea cargo agents see PARA 715 ante.

13 The Aviation and Maritime Security Act 1990 s 22(3) applies to the following articles: (1) any firearm, or any article having the appearance of being a firearm, whether capable of being discharged or not (s 22(6)(a)); (2) any explosive, any article manufactured or adapted (whether in the form of a bomb, grenade or otherwise) so as to have the appearance of being an explosive, whether it is capable of producing a practical effect by explosion or not, or any article marked or labelled so as to indicate that it is or contains an explosive (s 22(6)(b)); and (3) any article (not falling within either head (1) or head (2) supra) made or adapted for use for causing injury to or incapacitating a person or for destroying or damaging property, or intended by the person having it with him for such use, whether by him or by any other person (s 22(6)(c)). For the meaning of 'article' see PARA 712 note 5 ante. 'Firearm' includes an airgun or air pistol; and 'explosive' means any article manufactured for the purpose of producing a practical effect by explosion, or intended for that purpose by a person having the article with him: s 46(1). As to firearms see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 630 et seq.

14 In the case of premises used only as a private dwelling the power to search and (for that purpose) to enter may not be exercised except under the authority of a warrant issued by a justice of the peace (ibid s 22(4)(a)); and by a constable who is a member of a body of constables maintained in England, Scotland or Wales by a police authority or an authority which has entered into an agreement with the Independent Police Complaints Commission under the Police Reform Act 2002 s 26 (see POLICE vol 36(1) (2007 Reissue) PARA 347) (Aviation and Maritime Security Act 1990 s 22(4)(b) (amended by the Police Act 1997 s 134, Sch 9 para 64, Sch 10; and the Police Reform Act 2002 s 107(1), Sch 7 para 13)). As to police authorities see POLICE vol 36(1) (2007 Reissue) PARA 139 et seq. If, on an application made by a constable, a justice of the peace is satisfied that there are reasonable grounds for suspecting that an article to which the Aviation and Maritime Security Act 1990 s 22(3) applies (see note 13 supra) is in any premises used only as a private dwelling, he may issue a warrant authorising a constable to enter and search the premises: s 22(5). As to justices of the peace see MAGISTRATES vol 29(2) (Reissue) PARA 501 et seq.

15 Ibid s 22(3), (3A) (s 22(3A) added by the Merchant Shipping and Maritime Security Act 1997 Sch 4 paras 1, 4(1), (4)). The provisions of the Aviation and Maritime Security Act 1990 s 22(3), (3A) (as added) have effect without prejudice to the operation, in relation to any offence under the Aviation and Maritime Security Act 1990 in England and Wales, of the Police and Criminal Evidence Act 1984 ss 17, 24 (both as amended) or s 24A (as added) (which confer power to arrest without warrant and to enter premises for the purpose of making an arrest: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 884, 924-925) or of the Criminal Law Act 1967 s 3 (use of force in making arrest etc: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 20): Aviation and Maritime Security Act 1990 s 22(10)(a) (amended by the Serious Organised Crime and Police Act 2005 s 111, Sch 7 para 60).

16 For the meaning of 'land' see PARA 712 note 5 ante.

17 Aviation and Maritime Security Act 1990 s 22(3)(a), s 22(3A) (s 22(3A) as added: see note 15 supra).

18 Ibid s 22(3)(b), s 22(3A) (s 22(3A) as added: see note 15 supra).

19 Ibid s 22(3)(c), s 22(3A) (s 22(3A) as added: see note 15 supra).

20 Ibid s 22(3)(d), s 22(3A) (s 22(3A) as added: see note 15 supra).

21 For the meaning of 'person' see PARA 605 note 4 ante.

22 Aviation and Maritime Security Act 1990 s 22(7)(a).

23 Ibid s 22(7)(b).

24 Ibid s 22(7). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum (s 22(8)(a)); and on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or to both (s 22(8)(b)). As to the statutory maximum see PARA 713 note 17 ante. As to offences by bodies corporate see PARA 736 post.

25 Is an offence under ibid s 22(7)(a): see the text to note 22 supra.

26 Ibid s 22(9). The penalty for such an offence is, on summary conviction, a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues: s 22(9). As to the standard scale see PARA 605 note 13 ante.

UPDATE

712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

VIOLENCE/ (ii) Powers of the Secretary of State/718. Power to require other persons to promote searches.

718. Power to require other persons to promote searches.

For the purposes to which the statutory provisions relating to the protection of ships¹ and harbour areas² against acts of violence apply³, the Secretary of State⁴ may give a direction⁵ in writing⁶ to any person⁷ who carries on harbour operations⁸ in a harbour area⁹, or is permitted to have access to a restricted zone of a harbour area¹⁰ for the purposes of the activities of a business carried on by him¹¹, requiring him to use his best endeavours to secure that such searches as are specified in the direction are carried out by constables¹² or by other persons of a description specified in the direction¹³.

The searches specified in such a direction must be:

- 146 (1) in relation to a person who carries on harbour operations in a harbour area¹⁴, searches:
 - 5 9. (a) of any land¹⁵ which he occupies within the harbour area¹⁶; and
 - 10. (b) of persons or property¹⁷ which may at any time be on that land¹⁸; and
- 6 147 (2) in relation to a person permitted to have access to a restricted zone of a harbour area¹⁹, searches:
 - 7 11. (a) of any land which he occupies outside the harbour area for the purposes of his business²⁰; and
 - 12. (b) of persons or property which may at any time be on that land²¹.

Any person who, without reasonable excuse, fails to comply with such a direction is guilty of an offence²². Where a person is convicted of such an offence, then, if without reasonable excuse the failure in respect of which he was convicted is continued after the conviction, he is guilty of a further offence¹⁵.

1 For the meaning of 'ship' see PARA 712 note 3 ante.

2 For the meaning of 'harbour area' see PARA 712 note 7 ante.

3 In the purposes to which the Aviation and Maritime Security Act 1990 Pt III (ss 18-46) (as amended) applies: see s 18; and PARA 712 ante. For the meaning of 'act of violence' see PARA 712 note 2 ante.

4 As to the Secretary of State see PARA 603 ante.

5 As to general provisions relating to directions and their enforcement see PARA 720 et seq post.

6 For the meaning of 'writing' see PARA 605 note 3 ante.

7 For the meaning of 'person' see PARA 605 note 4 ante.

8 For the meaning of 'harbour operations' see PARA 713 note 10 ante.

9 Aviation and Maritime Security Act 1990 s 23(1)(a).

10 For the meaning of 'person permitted to have access to a restricted zone of a harbour area' see PARA 713 note 12 ante. For the meaning of 'restricted zone' see PARA 714 note 5 ante.

11 Aviation and Maritime Security Act 1990 s 23(1)(b).

12 For the meaning of 'constable' see PARA 714 note 18 ante.

13 Aviation and Maritime Security Act 1990 s 23(1) (amended by the Merchant Shipping and Maritime Security Act 1997 ss 25, 29(2), Sch 4 paras 1, 5, Sch 7 Pt I). A direction under the Aviation and Maritime Security Act s 23(1) (as amended) may not be given to a harbour authority or a harbour operator: s 23(1A) (added by the Merchant Shipping and Maritime Security Act 1997 Sch 4 paras 1, 5). For the meaning of 'harbour authority' see PARA 713 note 9 ante; and for the meaning of 'harbour operator' see PARA 714 note 7 ante. As to powers to require harbour authorities and harbour operators to promote searches see PARA 717 ante. As to the application of the Aviation and Maritime Security Act 1990 s 23 (as amended) to sea cargo agents see PARA 715 ante.

14 Ie a person falling within ibid s 23(1)(a): see the text to notes 7-9 supra.

15 For the meaning of 'land' see PARA 712 note 5 ante.

16 Aviation and Maritime Security Act 1990 s 23(2)(a)(i).

17 For the meaning of 'property' see PARA 712 note 5 ante.

18 Aviation and Maritime Security Act 1990 s 23(2)(a)(ii).

19 Ie a person falling within ibid s 23(1)(b): see the text to notes 10-11 supra.

20 Ibid s 23(2)(b)(i).

21 Ibid s 23(2)(b)(ii).

22 Ibid s 23(3). The penalty for such an offence is, on summary conviction, a fine not exceeding the statutory maximum (see s 23(3)(a)); and on conviction on indictment, a fine or imprisonment for a term not exceeding two years or both (see s 23(3)(b)). As to the statutory maximum see PARA 713 note 17 ante. As to offences by bodies corporate see PARA 736 post.

15 Ibid s 23(4). The penalty for such further offence is, on summary conviction, a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues: s 23(4). As to the standard scale see PARA 605 note 13 ante.

UPDATE

712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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719. General power to direct measures to be taken.

The Secretary of State¹ may give a direction² in writing³ to:

148 (1) any person⁴ who is the owner⁵, charterer or manager of one or more ships⁶ which are British ships⁷ or are in a harbour area⁸;

149 (2) any harbour authority⁹;

150 (3) any person other than a harbour authority who carries on harbour operations in a harbour area¹⁰; and

- 151 (4) any person who is permitted to have access to a restricted zone of a harbour area¹¹ for the purposes of the activities of a business carried on by him¹²,

requiring him to take such measures¹³ for the purposes to which the statutory provisions relating to the protection of ships and harbour areas against acts of violence apply¹⁴ as are specified in the direction¹⁵.

The measures specified in such a direction must be:

- 152 (a) in the case of a person mentioned in head (1) above, in respect of all the ships within that head of which, at the time when the direction is given or at any subsequent time, he is the owner, charterer or manager or in respect of any such ships specified in the direction¹⁶;
- 153 (b) in the case of a harbour authority, in respect of the harbour area¹⁷;
- 154 (c) in the case of a person mentioned in head (3) above, in respect of the harbour operations carried on by him¹⁸; and
- 155 (d) in the case of a person mentioned in head (4) above, in respect of such activities carried on by that person in the restricted zone as are specified in the direction¹⁹.

Such measures²⁰ may include the provision by the person to whom the direction is given of personnel charged with the duty (at such times as may be specified in the direction):

- 156 (i) where the direction is given to a person as the owner, charterer or manager of ships, of guarding the ships against acts of violence²¹;
- 157 (ii) where the direction is given to a harbour authority, of guarding the harbour area, or persons or property²² (including ships) in any part of the harbour area, against acts of violence²³;
- 158 (iii) where the direction is given to a person as falling within head (3) above, of guarding against acts of violence against any ship in the harbour area which is for the time being under his control²⁴;
- 159 (iv) where the direction is given to a person as falling within head (4) above, of guarding any land²⁵ outside the harbour area occupied by him for the purposes of his business, any vehicles or equipment used for those purposes and any goods which are in his possession for those purposes²⁶ and any ship which is for the time being under his control²⁷.

A direction given under these provisions may be either of a general or of a specific character, and may require any measures specified in it to be taken at such time or within such period as may be so specified²⁸. Such a direction must not require any search (whether of persons or property)²⁹; and it must not require the modification or alteration of any ship, or of any of its apparatus or equipment, or the installation or carriage of additional apparatus or equipment or prohibit a ship from being caused or permitted to go to sea without some modification or alteration of the ship or its apparatus or equipment or the installation or carriage of additional apparatus or equipment³⁰.

Any person who, without reasonable excuse, fails to comply with such a direction given to him³¹ or who intentionally interferes with any building constructed or works executed on any land in compliance with such a direction or with anything installed on, under, over or across any land in compliance with such a direction³², commits an offence³³. Where a person is convicted of such an offence, then, if without reasonable excuse the failure in respect of which he was convicted is continued after the conviction, he is guilty of a further offence³⁴.

- 1 As to the Secretary of State see PARA 603 ante.
- 2 As to general provisions relating to directions and their enforcement see PARA 720 et seq post.
- 3 For the meaning of 'writing' see PARA 605 note 3 ante.
- 4 For the meaning of 'person' see PARA 605 note 4 ante.
- 5 For the meaning of 'owner' see PARA 713 note 5 ante.
- 6 For the meaning of 'ship' see PARA 712 note 3 ante.
- 7 Aviation and Maritime Security Act 1990 s 24(1)(a)(i). For the meaning of 'British ship' see PARA 713 note 7 ante.
- 8 Ibid s 24(1)(a)(ii). For the meaning of 'harbour area' see PARA 712 note 7 ante.
- 9 Ibid s 24(1)(b). For the meaning of 'harbour authority' see PARA 713 note 9 ante.
- 10 Ibid s 24(1)(c). For the meaning of 'harbour operations' see PARA 713 note 10 ante.
- 11 For the meaning of 'person permitted to have access to a restricted zone of a harbour area' see PARA 713 note 12 ante. For the meaning of 'restricted zone' see PARA 714 note 5 ante.
- 12 Aviation and Maritime Security Act 1990 s 24(1)(d).
- 13 'Measures' (without prejudice to the generality of that expression) includes the construction, execution, alteration, demolition or removal of any building or other works (whether on dry land or on the seabed or other land covered by water), and also includes the institution or modification, and the supervision and enforcement, of any practice or procedure: *ibid* s 46(1).
- 14 *Ie* for the purposes to which *ibid* Pt III (ss 18-46) (as amended) applies: see s 18; and PARA 712 ante. For the meaning of 'act of violence' see PARA 712 note 2 ante.
- 15 *Ibid* s 24(2). A direction may be given to a person appearing to the Secretary of State to be about to become a person mentioned in heads (1)-(4) in the text but the direction does not take effect until he becomes a person so mentioned, and s 24(1)-(5) applies with the necessary modifications: s 24(6). As to the application of s 24 to sea cargo agents see PARA 715 ante.
- 16 *Ibid* s 24(2)(a).
- 17 *Ibid* s 24(2)(b).
- 18 *Ibid* s 24(2)(c).
- 19 *Ibid* s 24(2)(d).
- 20 *Ie* without prejudice to the generality of *ibid* s 24(2) (see the text to notes 13-19 *supra*): s 24(3).
- 21 *Ibid* s 24(3)(a).
- 22 For the meaning of 'property' see PARA 712 note 5 ante.
- 23 Aviation and Maritime Security Act 1990 s 24(3)(b). The ownership of any property is not affected by reason only that it is placed on or under, or affixed to, any land in compliance with a direction under s 24: s 24(10).
- 24 *Ibid* s 24(3)(c).
- 25 For the meaning of 'land' see PARA 712 note 5 ante.
- 26 Aviation and Maritime Security Act 1990 s 24(3)(d)(i).
- 27 *Ibid* s 24(3)(d)(ii).
- 28 *Ibid* s 24(4).
- 29 *Ibid* s 24(5)(a).

30 Ibid s 24(5)(b).

31 Ibid s 24(7)(a).

32 Ibid s 24(7)(b).

33 Ibid s 24(7). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum (s 24(8)(a)); and, on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or to both (s 24(8)(b)). As to the statutory maximum see PARA 713 note 17 ante. As to offences by bodies corporate see PARA 736 post.

34 Ibid s 24(9). The penalty for such further offence is, on summary conviction, a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues: s 24(9). As to the standard scale see PARA 605 note 13 ante.

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712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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(iii) Supplemental Provisions as to Directions

720. Matters which may be included in directions.

A direction providing for searches in connection with restrictions imposed in relation to ships¹ or requiring harbour authorities² or others to promote searches³ may specify: (1) the minimum number of persons by whom a search may be carried out; (2) the qualifications⁴ which persons carrying out any such search are to have; (3) the manner in which a search is to be carried out; and (4) any apparatus, equipment or other aids to be used for the purpose of the search⁵. Where a direction provides for modifications or alterations to a ship or its apparatus or equipment or the installation of additional apparatus or equipment⁶, it may specify the qualifications that the persons carrying out such actions are required to have⁷.

Any other direction⁸ may specify: (a) the minimum number of persons to be employed for the purpose of any measures required by the direction to be taken by the person⁹ to whom it is given and the qualifications which persons employed for those purposes are to have¹⁰; and (b) any apparatus, equipment or other aids to be used for those purposes¹¹.

Where a direction under any of the relevant provisions¹² requires searches to be carried out, or other measures¹³ to be taken, by constables¹⁴, the direction may require the person to whom it is given to inform the chief officer of police for the police area¹⁵ in which the searches are to be carried out or the other measures taken that the Secretary of State¹⁶ considers it appropriate that constables should be duly authorised to carry, and should carry, firearms¹⁷ when carrying out the searches or taking the measures in question¹⁸.

A direction¹⁹ to a person need not be addressed to that particular person but may be framed in general terms applicable to all persons to whom such a direction may be given or to any class of such persons to which that particular person belongs²⁰.

- 1 Ie a direction made under the Aviation and Maritime Security Act 1990 s 21(1): see PARA 716 ante. For the meaning of 'ship' see PARA 712 note 3 ante.
- 2 For the meaning of 'harbour authority' see PARA 713 note 9 ante.
- 3 Ie a direction made under the Aviation and Maritime Security Act 1990 s 22 (as amended) or s 23 (as amended): see PARAS 717-718 ante.
- 4 In *ibid* s 25, 'qualifications' includes training and experience: s 25(6).
- 5 *Ibid* s 25(1).
- 6 Ie a direction made under *ibid* s 21(2): see PARA 716 ante.
- 7 *Ibid* s 25(2).
- 8 Ie a direction under *ibid* s 24: see PARA 719 ante.
- 9 For the meaning of 'person' see PARA 605 note 4 ante.
- 10 Aviation and Maritime Security Act 1990 s 25(3)(a).
- 11 *Ibid* s 25(3)(b).
- 12 Ie *ibid* ss 21-24 (ss 22, 23 as amended): see PARAS 716-719 ante.
- 13 For the meaning of 'measures' see PARA 719 note 13 ante.
- 14 For the meaning of 'constable' see PARA 714 note 18 ante.
- 15 For the meaning of 'chief officer of police' see POLICE vol 36(1) (2007 Reissue) PARA 105. As to police areas see POLICE vol 36(1) (2007 Reissue) PARA 136.
- 16 As to the Secretary of State see PARA 603 ante.
- 17 For the meaning of 'firearm' see PARA 717 note 13 ante. The direction itself cannot authorise the carrying of firearms: see the Aviation and Maritime Security Act 1990 s 26(1) (as amended); and PARA 721 post. As to firearms generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 630 et seq.
- 18 *Ibid* 1990 s 25(4). Nothing in s 25(1)-(4) (see the text to notes 1-18 supra) is to be construed as limiting the generality of any of the preceding provisions of Pt III (ss 18-46) (as amended): s 25(5).
- 19 Ie a direction made under *ibid* ss 21, 22, 23 or 24 (ss 22, 23 as amended): see PARAS 716-719 ante.
- 20 *Ibid* s 27(1).

UPDATE

712-738 Protection of Harbour Areas Against Acts of Violence

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721. Limitations on scope of directions.

A direction¹ may not require or authorise any person to carry a firearm². A direction has no effect in relation to any ship³ in naval, customs or police service⁴. Nor does a direction have effect in relation to a ship which is registered outside the United Kingdom⁵ and of which the owner⁶ is a foreign government or a department or agency of such a government, except at a time when it is being used for commercial purposes or is allocated by that government, department or agency for such use⁷.

A direction (except in so far as it requires any building or other works to be constructed, executed, altered, demolished or removed) may not be construed as requiring or authorising the person⁸ to whom the direction was given, or any person acting as his employee⁹ or agent, to do anything which, apart from the direction, would constitute an act of violence¹⁰, but a constable¹¹ or other specified person¹² may use such force as is reasonable in the circumstances¹³.

In so far as a direction requires anything to be done or not done at a place outside the United Kingdom, it has no effect except in relation to British ships¹⁴ and it does not have effect so as to require anything to be done or not done in contravention of any provision of the law (whether civil or criminal) in force at that place, other than any such provision relating to breach of contract¹⁵.

In so far as a direction to a harbour authority¹⁶ or certain other persons¹⁷ requires a building or other works to be constructed, executed, altered, demolished or removed on land¹⁸ outside the harbour area¹⁹ or other measures²⁰ on such land, it does not confer on the person directed rights as against a person who has an interest in that land²¹, a right to occupy that land²², or a right restrictive of its use²³.

The limitations described above are not to be construed as derogating from any exemption or immunity of the Crown in relation to the statutory provisions²⁴ relating to the protection of ships and harbour areas against acts of violence²⁵.

1 In the Aviation and Maritime Security Act 1990 s 26 (as amended), 'direction' means a direction under ss 21, 22, 23, or 24 (ss 22, 23 as amended) (see PARAS 716-719 ante): s 26(8).

2 Ibid s 26(1). This prohibition does not apply to the extent necessary for the purpose of removing any firearm found pursuant to a search under s 22 (as amended) (see PARA 717 ante) from the restricted zone and delivering the firearm to a person authorised to carry it: s 26(1) (amended by the Merchant Shipping and Maritime Security Act 1997 s 25, Sch 4 paras 1, 6). For the meaning of 'firearm' see PARA 717 note 13 ante. For the meaning of 'restricted zone' see PARA 714 note 5 ante.

3 For the meaning of 'ship' see PARA 712 note 3 ante.

4 Aviation and Maritime Security Act 1990 s 26(2). 'Naval service' includes military and air force service: s 46(1).

5 For the meaning of 'United Kingdom' see PARA 613 note 1 ante.

6 For the meaning of 'owner' see PARA 713 note 5 ante.

7 Aviation and Maritime Security Act 1990 s 26(3).

8 For the meaning of 'person' see PARA 605 note 4 ante.

9 For the meaning of 'employee' see PARA 713 note 12 ante.

- 10 For the meaning of 'act of violence' see PARA 712 note 2 ante.
- 11 For the meaning of 'constable' see PARA 714 note 18 ante.
- 12 Ie a person specified in a direction made under the Aviation and Maritime Security Act 1990 s 22(1) (as amended) and exercising a power conferred by s 22(3): see PARA 717 ante.
- 13 Ibid s 26(4).
- 14 Ibid s 26(5)(a). For the meaning of 'British ship' see PARA 713 note 7 ante.
- 15 Ibid s 26(5)(b).
- 16 For the meaning of 'harbour authority' see PARA 713 note 9 ante.
- 17 Ie persons mentioned in the Aviation and Maritime Security Act 1990 s 24(1)(c), (d), namely persons who carry on harbour operations in a harbour area and persons who are permitted to have access to a restricted zone of a harbour area for the purpose of their business activities: see PARA 719 ante.
- 18 For the meaning of 'land' see PARA 712 note 5 ante.
- 19 For the meaning of 'harbour area' see PARA 712 note 7 ante.
- 20 For the meaning of 'measures' see PARA 719 note 13 ante.
- 21 Aviation and Maritime Security Act 1990 s 26(6)(a). See also note 23 infra.
- 22 Ibid s 26(6)(b). See also note 23 infra.
- 23 Ibid s 26(6)(c). Accordingly, the direction is not to be construed as requiring the person to whom it is given to do anything which would be actionable at the suit or instance of a person having such interest or right (as is mentioned in the text) in his capacity as a person having that interest or right: s 26(6). As to compensation in respect of certain measures taken in consequence of a direction see PARA 730 post.
- 24 Ie the provisions of ibid Pt III (ss 18-46) (as amended).
- 25 Ibid s 26(7).

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712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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722. Effects of directions in relation to other laws.

Where a direction¹ requires any thing to be done or not done in the United Kingdom², it has effect notwithstanding anything contained in any contract³ or having effect by virtue of any other statute or any rule of law⁴. Thus no proceedings, whether civil or criminal, lie against any

person⁵ in any United Kingdom court⁶ by reason of anything done or not done by him or on his behalf in compliance with a direction⁷.

Where a direction requires anything to be done or not done outside the United Kingdom, the direction has effect notwithstanding anything contained in any contract⁸. Accordingly, where a direction is inconsistent with anything in such a contract, it is to be construed (without prejudice to any proceedings in a court other than a United Kingdom court) as requiring compliance with the direction even though compliance would be in breach of that contract⁹. No proceedings for breach of contract lie against a person in a United Kingdom court by reason of anything done or not done by him, or on his behalf, at a place outside the United Kingdom in compliance with a direction, if the contract in question is a United Kingdom contract¹⁰.

1 Ile a direction made under the Aviation and Maritime Security Act 1990 ss 21, 22, 23, or 24 (ss 22, 23 as amended) (see PARAS 716-719 ante) as the direction has effect subject to any limitation imposed on its operation by s 26 (as amended) (see PARA 721 ante) or by any exemption or immunity of the Crown; and any reference in s 34(2)-(4) to compliance with a direction is a reference to compliance with it subject to any limitation so imposed: s 34(1). Section 34(1)-(4) has effect in relation to an enforcement notice as it has effect in relation to a direction under ss 21, 22, 23 or 24 (ss 22, 23 as amended): s 34(5). As to enforcement notices see PARA 725 post.

2 For the meaning of 'United Kingdom' see PARA 613 note 1 ante.

3 Ile whether a United Kingdom contract or not: Aviation and Maritime Security Act 1990 s 34(2). 'United Kingdom contract' means a contract which is either expressed to have effect in accordance with the law of the United Kingdom or part of the United Kingdom or, not being so expressed, is a contract the law applicable to which is the law of the United Kingdom or of part of the United Kingdom: s 34(6). As to the determination of the law applicable to a contract see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 349 et seq.

4 Ibid s 34(2).

5 For the meaning of 'person' see PARA 605 note 4 ante.

6 'United Kingdom court' means a court exercising jurisdiction in any part of the United Kingdom under the law of the United Kingdom or of part of the United Kingdom: Aviation and Maritime Security Act 1990s 34(6).

7 Ibid s 34(2).

8 Ibid s 34(3). This applies whether the contract is a United Kingdom contract or not: s 34(3). See also note 3 supra.

9 Ibid s 34(3).

10 Ibid s 34(4).

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712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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723. Urgent authorisation of exceptions from directions.

If it appears to the Secretary of State¹ that an exception from a direction² is urgently required in a particular case, he may notify (otherwise than in writing³) the person⁴ subject to the direction⁵ and authorise him to disregard the requirements of the direction:

160 (1) in relation to such ships⁶ or classes of ships, in relation to such harbour area⁷ or part of a harbour area, in relation to such land⁸ outside a harbour area, in relation to such activities or in relation to such persons or property⁹ or such descriptions of persons or property¹⁰; and

161 (2) on such occasion or series of occasions, or for such period¹¹,

as he may specify; and the direction is to have effect in that case subject to any exceptions so specified¹².

The notification ceases to have effect (if it has not already done so) either: (a) when a direction in writing is subsequently given to the person notified varying or revoking the original direction¹³; or (b) (if no such new direction is given) at the end of the period of 30 days beginning with the date on which the notification was given¹⁴.

1 As to the Secretary of State see PARA 603 ante.

2 I.e. a direction under the Aviation and Maritime Security Act 1990 ss 21, 22, 23 or 24 (ss 22, 23 as amended): see PARAS 716-719 ante.

3 For the meaning of 'writing' see PARA 605 note 3 ante.

4 For the meaning of 'person' see PARA 605 note 4 ante.

5 The notification is to be regarded as given to the person to whom it is directed if given: (1) to any person authorised by that person to receive any such direction or notification (Aviation and Maritime Security Act 1990 s 27(4)(a)); (2) where that person is a body corporate, to the secretary, clerk or similar officer of the body corporate (s 27(4)(b)); and (3) in any other case, to anyone holding a comparable office or position in that person's employment (s 27(4)(c)).

6 For the meaning of 'ship' see PARA 712 note 3 ante.

7 For the meaning of 'harbour area' see PARA 712 note 7 ante.

8 For the meaning of 'land' see PARA 712 note 5 ante.

9 For the meaning of 'property' see PARA 712 note 5 ante.

10 Aviation and Maritime Security Act 1990 s 27(2)(a).

11 Ibid s 27(2)(b).

12 Ibid s 27(2).

13 Ibid s 27(3)(a).

14 Ibid s 27(3)(b).

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712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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724. Objections to certain directions.

A person¹ required by a direction² to take measures³ consisting of or including the construction, execution, alteration, demolition or removal of a building or other works⁴, where that direction does not contain a statement that the measures are urgently required and that accordingly the direction is to take effect immediately⁵, may by notice in writing⁶ served⁷ on the Secretary of State⁸ object to the direction on the grounds that the measures to be taken are unnecessary and should be dispensed with⁹ or are excessively onerous or inconvenient and should be modified in a manner specified in the notice¹⁰.

Where such a notice of objection is served, the Secretary of State must consider the grounds of the objection and, if so required by the objector, afford to him an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose¹¹. The Secretary of State must then serve on the objector a notice in writing either confirming the direction as originally given¹², confirming it subject to one or more modifications specified in the notice¹³, or withdrawing the direction¹⁴. The direction does not take effect until it has been confirmed (with or without modification) by such a notice¹⁵.

1 For the meaning of 'person' see PARA 605 note 4 ante.

2 Ie a direction made under the Aviation and Maritime Security Act 1990 s 24: see PARA 719 ante.

3 For the meaning of 'measures' see PARA 719 note 13 ante.

4 Aviation and Maritime Security Act 1990 s 28(1)(a).

5 Ibid s 28(1)(b).

6 For the meaning of 'writing' see PARA 605 note 3 ante.

7 Any notice of objection must be served within the 30 days beginning with the date on which the direction was given: Aviation and Maritime Security Act 1990 s 28(2). As to the service of documents see PARA 738 post.

8 As to the Secretary of State see PARA 603 ante.

9 Aviation and Maritime Security Act 1990 s 28(2)(a).

10 Ibid s 28(2)(b).

11 Ibid s 28(3).

12 Ibid s 28(3)(a).

13 Ibid s 28(3)(b).

14 Ibid s 28(3)(c).

15 Ibid s 28(3).

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712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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725. Enforcement notices.

Where an authorised person¹ is of the opinion that a person² has failed to comply with any general requirement³ of a direction⁴, he may serve⁵ on that person a notice, known as an 'enforcement notice'⁶, specifying those general requirements of the direction with which he has, in the opinion of the authorised person, failed to comply⁷ and⁸ the measures⁹ that ought to be taken in order to comply with them¹⁰.

An enforcement notice may specify in greater detail measures which are described in general terms in those provisions of the direction to which it relates which impose general requirements, but may not impose any requirement which could not have been imposed by a direction given by the Secretary of State under the provision under which the direction was given¹¹. It may be so framed as to give the person on whom it is served a choice between different ways of complying with the specified general requirements¹².

Where a direction imposes restrictions in relation to ships¹³, the enforcement notice must require the person to whom the direction was given not to cause or permit things to be done as mentioned in the direction until the specified measures have been taken¹⁴. Where a direction requires a person to promote searches¹⁵ or to take other measures¹⁶, the enforcement notice must either require that the specified measures are taken within a specified period¹⁷ or that specified things are not done or caused or permitted to be done until the specified measures have been taken¹⁸.

Any person who, without reasonable excuse, fails to comply with an enforcement notice is guilty of an offence¹⁹. If, after a person is convicted of such an offence, the failure in respect of which he was convicted is continued after the conviction, he is guilty of a further offence²⁰. Any person who intentionally interferes with any building constructed or works executed on land²¹ or anything installed on, under, over or across land in compliance with an enforcement notice is guilty of an offence²².

1 'Authorised person' means a person authorised in writing by the Secretary of State for the purposes of the Aviation and Maritime Security Act 1990 Pt III (ss 18-46) (as amended): s 46(1). For the meaning of 'writing' see PARA 605 note 3 ante. As to the Secretary of State see PARA 603 ante.

2 For the meaning of 'person' see PARA 605 note 4 ante.

3 A requirement of a direction given by the Secretary of State under the Aviation and Maritime Security Act 1990 ss 21, 22, 23 or 24 (ss 22, 23 both as amended) (see PARAS 716-719 ante) is a 'general requirement' if the provision imposing it has been included in two or more directions given to different persons (whether or not at the same time) and is framed in general terms applicable to all the persons to whom those directions are given: s 29(2).

4 Ie a direction given under *ibid* ss 21, 22, 23 or 24 (ss 22, 23 both as amended): see PARAS 716-719 ante.

5 As to the service of documents see PARA 738 post.

6 If an enforcement notice is served on the owner, charterer or manager of a ship, then (whether or not that service is effected by virtue of the Aviation and Maritime Security Act 1990 s 45(8) (see PARA 738 post)) an authorised person may serve on the master of the ship a copy of the enforcement notice and of the direction to which it relates (s 29(3)(a)), and a notice stating that the master is required to comply with the enforcement notice (s 29(3)(b)); and, if he does so, s 31 (see the text to notes 19-22 *infra*), s 32 (see PARA 726 post) and s 33 (see note 10 *infra*; and PARA 727 post) have effect as if the enforcement notice had been served on him as well as on the owner, charterer or manager of the ship (s 29(3)). For the meaning of 'owner' see PARA 713 note 5 ante; for the meaning of 'master' see PARA 713 note 6 ante; and for the meaning of 'ship' see PARA 712 note 3 ante.

7 Ibid s 29(1)(a).

8 *Ie* subject to *ibid* s 30: see the text to notes 11-18 *infra*.

9 For the meaning of 'measures' see PARA 719 note 13 ante.

10 Aviation and Maritime Security Act 1990 s 29(1)(b). An enforcement notice served on any person may be revoked by a notice served on him by an authorised person (s 33(1)(a)), and may be varied by a further enforcement notice (s 33(1)(b)). Section 25 (see PARA 720 ante) and s 26 (see PARA 721 ante) apply to an enforcement notice as they apply to the direction to which the notice relates (s 33(2)); and s 34(1)-(4) (see PARA 722 ante) has effect in relation to an enforcement notice as it has effect in relation to a direction (s 34(5)). As to objections to enforcement notices see PARA 726 post; as to the effects of such notices see PARA 727 post; as to powers of inspection see PARA 729 post; and as to compensation see PARA 730 post.

11 Ibid s 30(1).

12 Ibid s 30(2).

13 *Ie* where a direction is made under *ibid* s 21: see PARA 716 ante.

14 Ibid s 30(3). An enforcement notice relating to a direction under s 21(2) (*ie* requiring the person directed not to cause or permit a ship to go to sea without modifications or alterations etc: see PARA 716 ante) must specify a reasonable period for the measures to be taken and the notice does not take effect before the end of the specified period: see s 30(4).

15 *Ie* where it is a direction made under *ibid* s 22 (as amended) or s 23 (as amended): see PARAS 717-718 ante.

16 *Ie* where it is a direction made under *ibid* s 24: see PARA 719 ante.

17 Ibid s 30(5)(a). Where the measures consist of or include the construction, execution, alteration, demolition or removal of buildings or other works, the period must be not less than 30 days beginning with the date of service of the notice (s 30(5)(a)(i)); and the period must be not less than seven days in any other case (s 30(5)(a)(ii)).

18 Ibid s 30(5)(b). Subject to s 33(2) (see note 10 *supra*), an enforcement notice requiring a person not to cause or permit anything to be done is to be construed as requiring him to take all such steps as in any particular circumstances are practicable and necessary to prevent that thing from being done: s 30(6).

19 Ibid s 31(1). The penalty for such an offence is, on summary conviction, a fine not exceeding the statutory maximum (s 31(1)(a)) and, on conviction on indictment, a fine (s 31(1)(b)). As to the statutory maximum see PARA 713 note 17 ante. As to offences by bodies corporate see PARA 736 post.

20 Ibid s 31(2). The penalty for such further offence is, on summary conviction, a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues: s 31(2). As to the standard scale see PARA 605 note 13 ante.

21 For the meaning of 'land' see PARA 712 note 5 ante.

22 Aviation and Maritime Security Act 1990 s 31(3). The penalty for such an offence is, on summary conviction, a fine not exceeding the statutory maximum (s 33(1)(a)) and, on conviction on indictment, a fine (s 33(1)(b)).

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712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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726. Objections to enforcement notices.

The person¹ on whom an enforcement notice² is served may serve³ on the Secretary of State⁴ a notice in writing⁵ of his objection to the enforcement notice, specifying the grounds of the objection⁶. The grounds of objection to an enforcement notice are:

- 162 (1) that the general requirements of the direction which are specified in the notice⁷ have been complied with⁸; or
- 163 (2) that the notice purports to impose a requirement which could not have been imposed by a direction given under the provision under which the direction to which the notice relates was given⁹; or
- 164 (3) that any requirement of the notice: (a) is unnecessary for complying with the general requirements specified¹⁰ and should be dispensed with¹¹; or (b) having regard to the terms of those general requirements, is excessively onerous or inconvenient and should be modified in a manner specified in the notice of objection¹².

Where a notice objecting to an enforcement notice is served, the Secretary of State must consider the grounds of the objection and, if so required by the objector, must afford to him an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose¹³. The Secretary of State must then serve on the objector a notice in writing either confirming the enforcement notice as originally served¹⁴, or confirming it subject to one or more modifications specified in the notice¹⁵, or cancelling the enforcement notice¹⁶.

If an enforcement notice contains a requirement¹⁷ for the recipient not to cause or permit certain things to be done in relation to ships until specified measures have been taken, or if it contains a requirement¹⁸ for him not to do specified things or cause or permit specified things to be done until specified measures have been taken, then the enforcement notice continues to have effect as originally served until either cancelled or confirmed subject to modification¹⁹. In any other case it does not take effect until confirmed, with or without modification²⁰.

1 For the meaning of 'person' see PARA 605 note 4 ante.

2 As to enforcement notices see PARA 725 ante.

3 As to the service of documents see PARA 738 post.

4 As to the Secretary of State see PARA 603 ante.

5 For the meaning of 'writing' see PARA 605 note 3 ante.

6 Aviation and Maritime Security Act 1990 s 32(1). The notice must be served: (1) where the enforcement notice specifies measures falling within s 30(5)(a)(i) (see PARA 725 ante), before the end of the period of 30 days beginning with the date on which the enforcement notice was served (s 32(2)(a)); or (2) in any other case, before the end of the period of seven days beginning with that date (s 32(2)(b)). For the meaning of 'measures' see PARA 719 note 13 ante.

7 le for the purposes of ibid s 29(1)(a): see PARA 725 ante.

8 Ibid s 32(3)(a).

9 Ibid s 32(3)(b).

10 le for the purposes of ibid s 29(1)(a): see PARA 725 ante.

11 Ibid s 32(3)(c)(i).

12 Ibid s 32(3)(c)(ii).

13 Ibid s 32(4).

14 Ibid s 32(4)(a).

15 Ibid s 32(4)(b).

16 Ibid s 32(4)(c).

17 le a requirement as mentioned in ibid s 30(3) (see PARA 725 ante): see s 32(5)(a).

18 le a requirement as mentioned in ibid s 30(5)(b) (see PARA 725 ante): see s 32(5)(a).

19 Ibid s 32(5)(a).

20 Ibid s 32(5)(b).

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Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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727. Effects of enforcement notices.

The ownership of any property¹ is not affected by reason only that it is placed on or under or affixed to any land² in compliance with an enforcement notice³.

Where an authorised person⁴ has served an enforcement notice specifying the general requirements⁵ of a direction with which the person⁶ on whom it is served has, in the opinion of the authorised person, failed to comply, the person on whom the notice is served is not to be taken, for the purposes of the provisions relating to offences respecting directions⁷, to have failed to comply with the direction⁸ by reason of the matters specified in the notice⁹.

The fact that an enforcement notice specifies certain general requirements of a direction as not having been complied with is not, in any proceedings, evidence that any other requirement of the direction has been complied with¹⁰.

- 1 For the meaning of 'property' see PARA 712 note 5 ante.
- 2 For the meaning of 'land' see PARA 712 note 5 ante.
- 3 Aviation and Maritime and Security Act 1990 s 33(3). As to enforcement notices see PARA 725 ante.
- 4 For the meaning of 'authorised person' see PARA 725 note 1 ante.
- 5 For the meaning of 'general requirement' see PARA 725 note 3 ante.
- 6 For the meaning of 'person' see PARA 605 note 4 ante.
- 7 For the purposes of the Aviation and Maritime Security Act 1990 s 21(8) (see PARA 716 ante), s 22(7) (see PARA 717 ante), s 23(3) (see PARA 718 ante), or s 24(7) (see PARA 719 ante).
- 8 For the direction under *ibid* ss 21, 22, 23, 24 (ss 22, 23 both as amended) (see PARAS 716-719 ante): s 33(7).
- 9 *Ibid* s 33(4). This provision does not apply in relation to any proceedings commenced before the service of the enforcement notice: s 33(5).
- 10 See *ibid* s 33(6).

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712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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728. Detention of ships.

Where an authorised person¹ is satisfied that the owner², charterer, manager or master³ of a ship⁴ has failed to comply with:

- 165 (1) a direction given to him⁵ imposing restrictions in relation to that ship⁶; or
- 166 (2) an enforcement notice⁷ served on him in respect of that ship and relating to such a direction⁸,

he may certify in writing⁹ to that effect, and the ship may be detained until the authorised person otherwise directs¹⁰.

The detention may be enforced under the enforcement provisions¹¹ of the Merchant Shipping Act 1995¹².

- 1 For the meaning of 'authorised person' see PARA 725 note 1 ante.
- 2 For the meaning of 'owner' see PARA 713 note 5 ante.
- 3 For the meaning of 'master' see PARA 713 note 6 ante.
- 4 For the meaning of 'ship' see PARA 712 note 3 ante.
- 5 le under the Aviation and Maritime Security Act 1990 s 21 (see PARA 716 ante) or s 24 (see PARA 719 ante).
- 6 Ibid s 35(1)(a).
- 7 As to enforcement notices see PARA 725 ante.
- 8 Aviation and Maritime Security Act 1990 s 35(1)(b).
- 9 The certificate must state particulars of the non-compliance: ibid s 35(1). For the meaning of 'writing' see PARA 605 note 3 ante.
- 10 Ibid s 35(1). Where the authorised person does not himself detain the ship, he must deliver the certificate to the officer detaining the ship: s 35(2). On detaining the ship, the authorised person or other officer must deliver to the master of the ship a copy of the certificate: s 35(3).
- 11 le the Merchant Shipping Act 1995 s 284 (as amended): see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1253.
- 12 Aviation and Maritime Security Act 1990 s 35(4) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 88(1), (4)).

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712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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729. Inspection of ships and harbour areas.

In order to enable the Secretary of State¹ to determine whether to give a direction² or whether a direction or enforcement notice³ is being or has been complied with, an authorised person⁴ has power⁵ to inspect: (1) any British ship⁶; (2) any other ship⁷ while in a harbour area⁸; (3) any part of a harbour area⁹; or (4) land¹⁰ outside a harbour area and occupied for business purposes by a person¹¹ who for business purposes carries on (or appears about to carry on) harbour operations¹² in a harbour area for the purposes of that business¹³, or is permitted (or appears about to be permitted) to have access to a restricted zone of a harbour area¹⁴ for the purposes of the activities of that business¹⁵.

An authorised person conducting such an inspection has power, as he may consider necessary for the purpose for which the inspection is carried out¹⁶:

- 167 (a) to subject any property¹⁷ found by him on the ship (but not the ship itself or any apparatus or equipment installed in it) or, as the case may be, to subject that part of the harbour area or any property found by him there or on that land, to tests¹⁸;
- 168 (b) to take steps to ascertain what practices or procedures are being followed in relation to security¹⁹, or to test the effectiveness of any practice or procedure relating to security²⁰; or
- 169 (c) to require the owner²¹, charterer, manager or master²² of the ship, the harbour authority²³, the occupier of the land or any harbour operator²⁴ to furnish to him information²⁵.

For the purpose of exercising any power conferred on him²⁶, an authorised person may, for the purpose of inspecting a ship, go on board it and take all such steps as are necessary to ensure that it is not moved²⁷; for the purpose of inspecting any part of a harbour area, enter any building or works in the harbour area or enter upon any land in the harbour area²⁸; or for the purpose of inspecting any land outside a harbour area, enter upon the land and enter any building or works on the land²⁹. However, these powers do not include power for an authorised person to use force for the purpose of going on board any ship, entering any building or works or entering upon any land³⁰.

Any person who, without reasonable excuse, fails to comply with a requirement³¹ to furnish information³², or in furnishing such information knowingly or recklessly makes a statement which is false in a material particular³³, commits an offence³⁴.

1 As to the Secretary of State see PARA 603 ante.

2 I.e. a direction under the Aviation and Maritime Security Act 1990 ss 21, 22, 23 or 24 (ss 22, 23 as amended): see PARAS 716-719 ante.

3 As to enforcement notices see PARA 725 ante.

4 For the meaning of 'authorised person' see PARA 725 note 1 ante.

5 I.e. on production, if required, of his credentials: Aviation and Maritime Security Act 1990 s 36(1).

6 Ibid s 36(1)(a). For the meaning of 'British ship' see PARA 713 note 7 ante.

7 For the meaning of 'ship' see PARA 712 note 3 ante.

8 Aviation and Maritime Security Act 1990 s 36(1)(b). For the meaning of 'harbour area' see PARA 712 note 7 ante.

9 Ibid s 36(1)(c).

10 For the meaning of 'land' see PARA 712 note 5 ante.

11 For the meaning of 'person' see PARA 605 note 4 ante.

12 For the meaning of 'harbour operations' see PARA 713 note 10 ante.

13 Aviation and Maritime Security Act 1990 s 36(1)(d)(i).

14 For the meaning of 'person permitted to have access to a restricted zone of a harbour area' see PARA 713 note 12 ante. For the meaning of 'restricted zone' see PARA 714 note 5 ante.

15 Aviation and Maritime Security Act 1990 s 36(1)(d)(ii).

16 Ibid s 36(2).

17 For the meaning of 'property' see PARA 712 note 5 ante.

- 18 Aviation and Maritime Security Act 1990 s 36(2)(a).
- 19 Ibid s 36(2)(b)(i).
- 20 Ibid s 36(2)(b)(ii).
- 21 For the meaning of 'owner' see PARA 713 note 5 ante.
- 22 For the meaning of 'master' see PARA 713 note 6 ante.
- 23 For the meaning of 'harbour authority' see PARA 713 note 9 ante.
- 24 For the meaning of 'harbour operator' see PARA 714 note 7 ante.
- 25 Aviation and Maritime Security Act 1990 s 36(2)(c) (amended by the Merchant Shipping and Maritime Security Act 1997 s 25, Sch 4 para 7).
- 26 Ie under the Aviation and Maritime Security Act 1990 s 36(1), (2) (as amended): see the text to notes 1-25 supra.
- 27 Ibid s 36(3)(a).
- 28 Ibid s 36(3)(b).
- 29 Ibid s 36(3)(c).
- 30 Ibid s 36(4).
- 31 Ie under ibid s 36(2)(c) (as amended): see the text to notes 21-25 supra.
- 32 Ibid s 36(5)(a).
- 33 Ibid s 36(5)(b).
- 34 Ibid s 36(5). The penalty for such an offence is, on summary conviction, a fine not exceeding the statutory maximum (s 36(6)(a)); and on conviction on indictment, a fine or imprisonment for a term not exceeding two years or both (s 36(6)(b)). As to the statutory maximum see PARA 713 note 17 ante. As to offences by bodies corporate see PARA 736 post.

UPDATE

712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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730. Compensation in respect of certain measures taken in compliance with a direction or enforcement notice.

If the value¹ of any interest in land² to which a person³ is entitled is depreciated in consequence of the taking of specified measures⁴ in compliance with a direction⁵ or with an enforcement notice⁶, or if the person having such an interest suffers loss in consequence of such measures

by being disturbed in his enjoyment of any of that land, then he is entitled to compensation equal to the amount of the depreciation or loss⁷. If any land other than the land on which the measures are taken is injuriously affected by the taking of the measures, any person having an interest in that other land who suffers loss in consequence is entitled to compensation equal to the amount of the loss⁸. Any such compensation is payable by the person who took the measures⁹.

No compensation is payable unless the person to whom it is payable¹⁰ serves¹¹ on the person by whom the measures in question were taken a notice in writing¹² claiming compensation¹³, and that notice is served before the end of two years from the completion of the measures¹⁴. Any dispute as to compensation¹⁵ is to be referred to and determined by the Lands Tribunal¹⁶.

1 When calculating value for any of the purposes of the Aviation and Maritime Security Act 1990 s 43, the Land Compensation Act 1961 s 5(2)-(4) (s 5(3) as amended) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 754) applies with the necessary modifications and if the interest to be valued is subject to a mortgage, it is to be treated as if it were not subject to the mortgage: see the Aviation and Maritime Security Act 1990 Sch 2 paras 4, 10.

2 For the meaning of 'land' see PARA 712 note 5 ante.

3 For the meaning of 'person' see PARA 605 note 4 ante.

4 I.e. measures consisting of the construction, execution, alteration, demolition or removal of a building or other works on land either within or outside a harbour area: Aviation and Maritime Security Act 1990 s 43(1). Section 43(1) is subject to s 43(5), Sch 2 (see the text to notes 10-16, and see notes 5, 7 supra): s 43(5). For the meaning of 'measures' see PARA 719 note 13 ante. For the meaning of 'harbour area' see PARA 712 note 7 ante.

5 I.e. a direction under ibid s 24: see PARA 719 ante. In relation to any measures taken by any person on land outside a harbour area, any reference in s 43 to a direction or enforcement notice is to be construed as if the statutory provision limiting the scope of directions and enforcement notices in relation to certain persons having interests in or rights in respect of that land (i.e. under s 26(6) (see PARA 721 ante) and s 33(2) (see PARA 725 note 10 ante)) were omitted: Sch 2 paras 1, 3.

6 As to enforcement notices see PARA 725 ante. See also note 5 supra. Although the reference to enforcement notices is general, the nature of the measures in question (see note 4 supra) is such that it is only enforcement notices related to directions made under ibid s 24 (see PARA 719 ante) that appear to be relevant.

7 Ibid s 43(2). This provision is subject to Sch 2: see s 43(5). As to the power to make regulations as to the payment or application of any compensation or any assumptions to be made see Sch 2 paras 5, 6. At the date at which this volume states the law, no such regulations had been made.

8 Ibid s 43(3). This provision is subject to Sch 2: see s 43(5).

9 Ibid s 43(4). This provision is subject to Sch 2: see s 43(5).

10 I.e. payable in accordance with ibid s 43 (see the text to notes 1-9 supra) or in accordance with regulations under Sch 2 (see note 7 supra).

11 As to the service of documents see PARA 738 post.

12 For the meaning of 'writing' see PARA 605 note 3 ante.

13 I.e. compensation under the Aviation and Maritime Security Act 1990 s 43: see the text to notes 1-9 supra.

14 Ibid Sch 2 paras 1, 2.

15 I.e. any dispute arising under ibid s 43 or Sch 2, whether as to the right to any compensation or as to the amount of any compensation or otherwise: see Sch 2 para 7.

16 Ibid Sch 2 para 7. As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

UPDATE

712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

730 Compensation in respect of certain measures taken in compliance with a direction or enforcement notice

TEXT AND NOTE 16--Reference to the Lands Tribunal is now to the Upper Tribunal: Aviation and Maritime Security Act 1990 Sch 2 para 7 (amended by SI 2009/1307).

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731. Maritime security services: approved providers.

Regulations¹ may provide for the Secretary of State to maintain a list of persons who are approved by him for the provision of a particular maritime security service². The regulations may:

- 170 (1) prohibit the provision of a maritime security service by a person who is not listed in respect of that service³;
- 171 (2) prohibit the use or engagement for the provision of a maritime security service of a person who is not listed in respect of that service⁴;
- 172 (3) create a criminal offence⁵;
- 173 (4) make provision about application for inclusion in the list (including provision about fees)⁶;
- 174 (5) make provision about the duration and renewal of entries on the list (including provision about fees)⁷;
- 175 (6) make provision about training or qualifications which persons who apply to be listed or who are listed are required to undergo or possess⁸;
- 176 (7) make provision about removal from the list which must include provision for appeal⁹;
- 177 (8) make provision about the inspection of activities carried out by listed persons¹⁰;
- 178 (9) confer functions on the Secretary of State or on a specified person¹¹;
- 179 (10) confer jurisdiction on a court¹².

A direction¹³ may include a requirement to use a listed person for the provision of a maritime security service¹⁴, and provide for all or part of the direction not to apply, or to apply with modified effect, where a listed person provides a maritime security service¹⁵.

1 Regulations under the Aviation and Maritime Security Act 1990 s 36A (as added) must be made by the Secretary of State by statutory instrument which is subject to annulment in pursuance of resolution of either House of Parliament: s 36A(6)(c), (e) (s 36A added by the Railways and Transport Safety Act 2003 s 113). Such regulations must not be made unless the Secretary of State has consulted organisations appearing to him to represent persons affected by the regulations: Aviation and Maritime Security Act 1990 s 36A(6)(d) (as so

added). The regulations may make different provision for different cases, and may include incidental, supplemental or transitional provision: s 36A(6)(a), (b) (as so added). At the date at which this volume states the law no such regulations had been made. As to the Secretary of State see PARA 603 ante. For the meaning of 'person' see PARA 605 note 4 ante.

2 Ibid s 36A(2) (as added: see note 1 supra). 'Maritime security service' means a process or activity carried out for the purpose of: (1) complying with a requirement of a direction under any of ss 21-24 (ss 22, 23 as amended) (see PARAS 716-719 ante) (s 36A(1)(a) (as so added)); or (2) facilitating a person's compliance with a requirement of a direction under any of those provisions (s 36A(1)(b) (as so added)).

3 Ibid s 36A(3)(a) (as added: see note 1 supra).

4 Ibid s 36A(3)(b) (as added: see note 1 supra).

5 Ibid s 36A(3)(c) (as added: see note 1 supra). Regulations under s 36A(3)(c) (as added): (1) may not provide for a penalty on summary conviction greater than a fine not exceeding the statutory maximum (s 36A(4)(a) (as so added)); (2) may not provide for a penalty of imprisonment on conviction on indictment greater than imprisonment for a term not exceeding two years (whether or not accompanied by a fine) (s 36A(4)(b) (as so added)); and (3) may create a criminal offence of purporting, with intent to deceive, to do something as a listed person or of doing something, with intent to deceive, which purports to be done by a listed person (s 36A(4)(c) (as so added)). As to the statutory maximum see PARA 713 note 17 ante.

6 Ibid s 36A(3)(d) (as added: see note 1 supra).

7 Ibid s 36A(3)(e) (as added: see note 1 supra).

8 Ibid s 36A(3)(f) (as added: see note 1 supra).

9 Ibid s 36A(3)(g) (as added: see note 1 supra).

10 Ibid s 36A(3)(h) (as added: see note 1 supra).

11 Ibid s 36A(3)(i) (as added: see note 1 supra).

12 Ibid s 36A(3)(j) (as added: see note 1 supra).

13 Ie a direction under any of ibid ss 21-24 (ss 22, 23 as amended): see PARAS 716-719 ante.

14 Ibid s 36A(5)(a) (as added: see note 1 supra).

15 Ibid s 36A(5)(b) (as added: see note 1 supra).

UPDATE

712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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(iv) Offences Relating to Security of Harbour Areas

732. False statements relating to baggage, cargo etc.

A person¹ commits an offence² if, in answer to a question which:

- 180 (1) relates to any baggage, cargo³ or stores⁴, whether belonging to him or another, that is or are intended for carriage by sea by a British ship⁵ or by any other ship to or from the United Kingdom⁶; and
 - 181 (2) is put to him for the purposes to which the statutory provisions relating to the protection of ships and harbour areas⁷ against acts of violence apply⁸ by:
- 9
13. (a) a harbour authority⁹, a harbour operator¹⁰, the owner¹¹, charterer or manager of any ship¹², or any person who is permitted to have access to a restricted zone of a harbour area¹³ for the purposes of the activities of a business carried on by him¹⁴ and has control in that restricted zone over the baggage, cargo or stores to which the question relates¹⁵; or
 14. (b) any employee¹⁶ or agent of such a person as is mentioned in head (a) above in his capacity as employee or agent¹⁷; or
 15. (c) a constable¹⁸,
- 10

he makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular¹⁹.

1 For the meaning of 'person' see PARA 605 note 4 ante.

2 No offence is committed if the statement is made by an authorised person in the exercise of the power conferred by the Aviation and Maritime Security Act 1990 s 36(2)(b) (see PARA 729 ante): s 37(3). For the meaning of 'authorised person' see PARA 725 note 1 ante.

3 'Cargo' includes mail: *ibid* s 37(5).

4 'Stores' means any goods intended for sale or use in a ship, including fuel and spare parts and other articles of equipment, whether or not for immediate fitting: *ibid* s 37(5). For the meaning of 'ship' see PARA 712 note 3 ante; however, for these purposes, 'ship' does not include a ship used in naval, customs or police service: s 37(5). For the meaning of 'naval service' see PARA 721 note 4 ante. For the meaning of 'article' see PARA 712 note 5 ante.

5 *Ibid* s 37(1)(a)(i). For the meaning of 'British ship' see PARA 713 note 7 ante.

6 *Ibid* s 37(1)(a)(ii). For the meaning of 'United Kingdom' see PARA 613 note 1 ante.

7 For the meaning of 'harbour area' see PARA 712 note 7 ante.

8 *Ie* for the purposes to which the Aviation and Maritime Security Act 1990 Pt III (ss 18-46) (as amended) applies: see s 18; and PARA 712 ante. For the meaning of 'act of violence' see PARA 712 note 2 ante.

9 *Ibid* s 37(1)(b)(i), (2)(a). For the meaning of 'harbour authority' see PARA 713 note 9 ante.

10 *Ibid* s 37(1)(b)(i), (2)(aa) (added by the Merchant Shipping and Maritime Security Act 1997 s 25, Sch 4 para 8). For the meaning of 'harbour operator' see PARA 714 note 7 ante.

11 For the meaning of 'owner' see PARA 713 note 5 ante.

12 Aviation and Maritime Security Act 1990 s 37(1)(b)(i), (2)(b).

13 For the meaning of 'person permitted to have access to a restricted zone of a harbour area' see PARA 713 note 12 ante. For the meaning of 'restricted zone' see PARA 714 note 5 ante.

14 Aviation and Maritime Security Act 1990 s 37(1)(b)(i), (2)(c)(i).

15 *Ibid* s 37(1)(b)(i), (2)(c)(ii).

16 For the meaning of 'employee' see PARA 713 note 12 ante.

17 Aviation and Maritime Security Act 1990 s 37(1)(b)(iii).

18 Ibid s 37(1)(b)(iii). For the meaning of 'constable' see PARA 714 note 18 ante.

19 Ibid s 37(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 37(4). As to the standard scale see PARA 605 note 13 ante. As to offences by bodies corporate see PARA 736 post.

UPDATE

712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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733. False statements in connection with identity documents.

A person¹ commits an offence² if: (1) for the purpose of, or in connection with, an application made by him or another for the issue of any identity document³; or (2) in connection with the continued holding by him or another of any such document which has already been issued⁴, he makes to:

- 182 (a) a harbour authority⁵;
- 183 (b) a harbour operator⁶;
- 184 (c) the owner⁷, charterer or manager of any ship⁸;
- 185 (d) any person who is permitted to have access to a restricted zone of a harbour area⁹ for the purpose of the activities of a business carried on by him¹⁰;
- 186 (e) any employee¹¹ or agent of such a person mentioned in heads (a) to (d) above¹²; or
- 187 (f) a constable¹³,

a statement which he knows to be false in a material particular, or recklessly makes to any of those persons, a statement which is false in a material particular¹⁴.

1 For the meaning of 'person' see PARA 605 note 4 ante.

2 No offence is committed if the statement is made by an authorised person in the exercise of the power conferred by the Aviation and Maritime Security Act 1990 s 36(2)(b) (see PARA 729 ante): s 38(4). For the meaning of 'authorised person' see PARA 725 note 1 ante.

3 Ibid s 38(1)(a). Section 38(1) applies to any identity document which is to be or has been issued by any of the persons specified in s 38(3) (as amended) (see heads (a)-(d) in the text) in accordance with arrangements the maintenance of which is required by a direction given by the Secretary of State under s 24 (see PARA 719 ante): s 38(2). As to the Secretary of State see PARA 603 ante.

4 Ibid s 38(1)(b).

- 5 Ibid s 38(3)(a). For the meaning of 'harbour authority' see PARA 713 note 9 ante.
- 6 Ibid s 38(3)(aa) (added by the Merchant Shipping and Maritime Security Act 1997 s 25, Sch 4 para 9). For the meaning of 'harbour operator' see PARA 714 note 7 ante.
- 7 For the meaning of 'owner' see PARA 713 note 5 ante.
- 8 Aviation and Maritime Security Act 1990 s 38(3)(b). For the meaning of 'ship' see PARA 712 note 3 ante.
- 9 For the meaning of 'person permitted to have access to a restricted zone of a harbour area' see PARA 713 note 12 ante. For the meaning of 'restricted zone' see PARA 714 note 5 ante. For the meaning of 'harbour area' see PARA 712 note 7 ante.
- 10 Aviation and Maritime Security Act 1990 s 38(3)(c).
- 11 For the meaning of 'employee' see PARA 713 note 12 ante.
- 12 Aviation and Maritime Security Act 1990 s 38(1).
- 13 Ibid s 38(1). For the meaning of 'constable' see PARA 714 note 18 ante.
- 14 Ibid s 38(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 38(5). As to the standard scale see PARA 605 note 13 ante. As to offences by bodies corporate see PARA 736 post.

UPDATE

712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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734. Offences relating to authorised persons.

A person commits an offence if he:

- 188 (1) intentionally obstructs an authorised person¹ acting in the exercise of a power conferred on him by or under the statutory provisions² relating to the protection of ships and harbour areas against acts of violence³; or
- 189 (2) falsely pretends to be an authorised person⁴.

1 For the meaning of 'authorised person' see PARA 725 note 1 ante. As to the powers conferred on authorised persons see PARAS 725, 728-729 ante.

2 Ie the Aviation and Maritime Security Act 1990 Pt III (ss 18-46) (as amended).

3 Ibid s 40(1)(a). A person guilty of an offence under s 40(1)(a) is liable, on summary conviction, to a fine not exceeding the statutory maximum (s 40(2)(a)) or, on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or to both (s 40(2)(b)). As to the statutory maximum see PARA 713 note 17 ante.

4 Ibid s 40(1)(b). A person guilty of an offence under s 40(1)(b) is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 40(3). As to the standard scale see PARA 605 note 13 ante.

UPDATE

712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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735. Duty to report certain occurrences.

For the purposes to which the statutory provisions relating to the protection of ships and harbour areas against acts of violence apply¹, the Secretary of State² may by regulations³ require such persons as are specified in the regulations to make a report to him, in such manner and within such period as are so specified, of any occurrence of a description so specified⁴.

Such regulations may provide that any person who, in making a report required by the regulations, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, is to be guilty of an offence⁵. The regulations may also provide for persons to be guilty of an offence in such other circumstances as may be specified in the regulations⁶.

1 For the purposes to which the Aviation and Maritime Security Act 1990 Pt III (ss 18-46) (as amended) applies: see s 18; and PARA 712 ante.

2 As to the Secretary of State see PARA 603 ante.

3 Before making any regulations under the Aviation and Maritime Security Act 1990 s 42, the Secretary of State must consult organisations appearing to him to represent persons affected by the proposed regulations: s 42(2). For the meaning of 'person' see PARA 605 note 4 ante. As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2100) PARA 627. Any statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament: s 42(5). At the date at which this volume states the law no such regulations had been made.

4 Ibid s 42(1). The regulations may require the reporting of occurrences outside the United Kingdom only if they relate to British ships: s 42(4). For the meaning of 'United Kingdom' see PARA 613 note 1 ante; and for the meaning of 'British ship' see PARA 713 note 7 ante.

5 Ibid s 42(3)(a). A person guilty of such an offence is to be liable, on summary conviction, to a fine not exceeding the statutory maximum (s 42(3)(a)(i)); or, on conviction on indictment, to a fine or imprisonment for up to two years or to both (s 42(3)(a)(ii)). As to the statutory maximum see PARA 713 note 17 ante. As to offences by bodies corporate see PARA 736 post.

6 Ibid s 42(3)(b). A person guilty of such an offence is to be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale: s 42(3)(b). As to the standard scale see PARA 605 note 13 ante.

UPDATE

712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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736. Offences by bodies corporate.

Where an offence under the statutory provisions relating to the protection of ships and harbour areas against acts of violence¹ has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly². Where the affairs of a body corporate are managed by its members, this provision applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate³.

1 le under the Aviation and Maritime Security Act 1990 Pt III (ss 18-46) (as amended), including any provision of that Part as applied by regulations made under s 41 (see PARA 715 ante) or under regulations made under s 42 (see PARA 735 ante): s 50(1). For the meaning of 'act of violence' see PARA 712 note 2 ante.

2 Ibid s 50(1). As to bodies corporate see COMPANIES; CORPORATIONS.

3 Ibid s 50(2).

UPDATE

712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(5) PROTECTION OF HARBOUR AREAS AGAINST ACTS OF VIOLENCE/ (v) Administrative Provisions/737. Annual report by the Secretary of State.

(v) Administrative Provisions

737. Annual report by the Secretary of State.

The Secretary of State¹ must, on or before 31 January in each year, lay before each House of Parliament a report stating the number of notices served by him², the number of directions given by him³ and the number of enforcement notices⁴ served by authorised persons⁵ during the period of 12 months⁶ which expired with the preceding December⁷.

Each report must deal separately with each matter⁸ and must, for each matter, show separately the number of notices or directions which during the period were served on or given to persons⁹ as being, or as appearing to the Secretary of State to be about to become:

- 190 (1) owners¹⁰, charterers, managers or masters¹¹ of ships¹²;
- 191 (2) harbour authorities¹³;
- 192 (3) persons carrying on harbour operations¹⁴ in a harbour area¹⁵; and
- 193 (4) persons permitted to have access to a restricted zone of a harbour area¹⁶ for the purposes of the activities of a business¹⁷.

1 As to the Secretary of State see PARA 603 ante.

2 He under the Aviation and Maritime Security Act 1990 s 19: see PARA 713 ante.

3 He under ibid ss 21-24 (ss 22, 23 as amended): see PARAS 716-719 ante.

4 As to enforcement notices see PARA 725 ante.

5 For the meaning of 'authorised person' see PARA 725 note 1 ante.

6 For the meaning of 'month' see PARA 671 note 30 ante.

7 Aviation and Maritime Security Act 1990 s 44(1).

8 He with notices served under ibid s 19 (see PARA 713 ante), directions given under s 21 (see PARA 716 ante), directions given under s 22 (as amended) (see PARA 717 ante), directions given under s 23 (as amended) (see PARA 718 ante), directions given under s 24 (see PARA 719 ante), and enforcement notices (see PARA 725 ante).

9 For the meaning of 'person' see PARA 605 note 4 ante.

10 For the meaning of 'owner' see PARA 713 note 5 ante.

11 For the meaning of 'master' see PARA 713 note 6 ante.

12 Aviation and Maritime Security Act 1990 s 44(2)(a). For the meaning of 'ship' see PARA 712 note 3 ante. As respects enforcement notices served on owners, charterers or managers of ships, the report must also show separately the number of copies of such notices which were served on masters of ships under s 29(3) (see PARA 725 ante): s 44(3).

13 Ibid s 44(2)(b). For the meaning of 'harbour authority' see PARA 713 note 9 ante.

14 For the meaning of 'harbour operations' see PARA 713 note 10 ante.

15 Aviation and Maritime Security Act 1990 s 44(2)(c). For the meaning of 'harbour area' see PARA 712 note 7 ante.

16 For the meaning of 'person permitted to have access to a restricted zone of a harbour area' see PARA 713 note 12 ante. For the meaning of 'restricted zone' see PARA 714 note 5 ante.

17 Aviation and Maritime Security Act 1990 s 44(2)(d).

UPDATE

712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(5) PROTECTION OF HARBOUR AREAS AGAINST ACTS OF VIOLENCE/ (v) Administrative Provisions/738. Service of documents.

738. Service of documents.

Any notice, any document containing a direction and any other document authorised or required¹ to be served on or given to any person², may be given to or served on him:

- 194 (1) by delivering it to him³; or
- 195 (2) by leaving it at his proper address⁴; or
- 196 (3) by sending it by post to him at that address⁵; or
- 197 (4) by sending it to him at that address by telex or other similar means which produce a document containing the text of the communication⁶; or
- 198 (5) where an address⁷ for service using electronic communications has been given by that person and not withdrawn⁸, and that person has agreed to accept service by electronic communications of documents in a certain form and has not withdrawn that agreement⁹, by using electronic communications to send the document in that form to that person at that address¹⁰.

Where an enforcement notice is to be served¹¹ on the owner, charterer or manager of a ship, it is to be treated as duly served on him if it is served on the master¹² of the ship in question¹³.

1 le by any provision of the Aviation and Maritime Security Act 1990 Pt III (ss 18-46) (as amended).

2 Ibid s 45(1). For the meaning of 'person' see PARA 605 note 4 ante. Any document authorised to be given to or served on a body corporate may be given to or served on the secretary, clerk or similar officer of that body: s 45(3) (substituted by the Transport Security (Electronic Communications) Order 2006, SI 2006/2190, art 4(1), (4)). As to bodies corporate see COMPANIES; CORPORATIONS.

3 Aviation and Maritime Security Act 1990 s 45(2)(a).

4 Ibid s 45(2)(b).

5 Ibid s 45(2)(c). For the purposes of s 45 (as amended) and the Interpretation Act 1978 s 7 (service of documents by post: see STATUTES vol 44(1) (Reissue) PARA 1388) in its application to the Aviation and Maritime Security Act 1990 s 45 (as amended), the proper address of any person to whom or on whom any document is to be given or served is his usual or last known address or place of business (whether in the United Kingdom or elsewhere), except that in the case of a body corporate or its secretary, clerk or similar officer it is the address of the registered or principal office of that body in the United Kingdom (or, if it has no office in the United Kingdom, of its principal office, wherever it may be): s 45(4). For the meaning of 'United Kingdom' see PARA 613 note 1 ante. As to the registered office of a company see COMPANIES vol 14 (2009) PARA 129. In the case of a person registered under any of the United Kingdom registration provisions as the owner of any ship so registered, the address for the time being recorded in relation to him in the register in which the ship is registered may also be treated for the purposes of s 45 (as amended) and the Interpretation Act 1978 s 7 as his proper address: Aviation and Maritime Security Act 1990 s 45(5). 'The United Kingdom registration provisions' means the Merchant Shipping Act 1995 Pt II (ss 8-23) (as amended) (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 245 et seq) or any Order in Council under the Hovercraft Act 1968 s 1 (as amended) (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 382 et seq): Aviation and Maritime Security Act 1990 s 45(10) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 88(5)). For the meaning of 'owner' see PARA 713 note 5 ante; and for the meaning of 'ship' see PARA 712 note 3 ante.

If the person to or on whom any document is to be given or served has notified the Secretary of State of an address within the United Kingdom, other than an address determined under the Aviation and Maritime Security

Act 1990 s 45(4) or (5) (as amended), as the one at which he or someone else on his behalf will accept documents of the same description as that document, that address may also be treated for the purposes of s 45 (as amended) and the Interpretation Act 1978 s 7 as his proper address: Aviation and Maritime Security Act 1990 s 45(6). As to the Secretary of State see PARA 603 ante. Any document may, where there are two or more owners registered under any of the United Kingdom registration provisions, be treated as duly served on each of those owners: (1) in the case of a ship in relation to which a managing owner is for the time being registered under registration regulations, if served on that managing owner (s 45(7)(a) (amended by the Merchant Shipping Act 1995 Sch 13 para 88(5))); and (2) in the case of any other ship, if served on any one of the registered owners (Aviation and Maritime Security Act 1990 s 45(7)(b)).

6 Ibid s 45(2)(d).

7 'Address', in relation to electronic communications, means any number or address used for the purposes of such communications; and 'electronic communication' has the same meaning as in the Electronic Communications Act 2000 (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616): Aviation and Maritime Security Act 1990 s 46(1) (definitions added by the Transport Security (Electronic Communications) Order 2006, SI 2006/2190, art 5).

8 Aviation and Maritime Security Act 1990 s 45(2)(e)(i) (s 45(2)(e) added by the Transport Security (Electronic Communications) Order 2006, SI 2006/2190, art 4(1), (2)). A person who has supplied another person with an address for service using electronic communications and who has agreed to accept service of documents in a certain form in accordance with the Aviation and Maritime Security Act 1990 s 45(2)(e) (as added) may give notice withdrawing that address or that agreement or both: s 45(2E) (s 45(2A)-(2I) added by the Transport Security (Electronic Communications) Order 2006, SI 2006/2190, art 4(1), (3)). A withdrawal under the Aviation and Maritime Security Act 1990 s 45(2E) or (2F) (as added) (see note 10 infra) takes effect on the later of the date specified by the person in the notice and the date which is 14 days after the date on which the notice is given: s 45(2G) (as so added). A notice under s 45(2E) or (2F) (as added) must be given to the person to whom the address was supplied or with whom the agreement was made: s 45(2H) (as so added). Oral notice is not sufficient for the purposes of s 45(2E) or (2F) (as added): s 45(2I) (as so added).

9 Ibid s 45(2)(e)(ii) (as added: see note 8 supra).

10 Ibid s 45(2)(e) (as added: see note 8 supra). A document given to or served on a person in accordance with s 45(2)(e) (as added) must be in a form sufficiently permanent to be used for subsequent reference: s 45(2A) (as so added). Where a document is given to or served on a person in accordance with s 45(2)(e) (as added), the document is, unless the contrary is proved, to be deemed to have been given to or served on that person at the time at which the electronic communication is transmitted except where transmission is made outside that person's normal business hours, in which case it is to be taken to have been given or served on the next working day: s 45(2B) (as so added). 'Working day' means any day other than a Saturday or a Sunday, Christmas Day or Good Friday, or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (see TIME vol 97 (2010) PARA 321) in any part of the United Kingdom: Aviation and Maritime Security Act 1990 s 45(2B) (as so added).

A document authorised or required to be given to or served on a person by the Secretary of State or an authorised person is also to be treated as given or served where: (1) that person and the Secretary of State or (as the case may be) the authorised person have agreed to his having access to documents of a particular description and in a certain form on a web site (instead of their being given to or served on him in any other way specified in s 45(2) (as amended)) (s 45(2C)(a) (as so added)); (2) that person has not withdrawn his agreement in accordance with s 45(2F) (as added) (s 45(2C)(b) (as so added)); (3) the document in question is a document to which the agreement applies (s 45(2C)(c) (as so added)); (4) the Secretary of State or the authorised person has given that person a notice, in a manner agreed between them for the purpose stating that the document has been published on a web site maintained by or on behalf of the Secretary of State, setting out the address of that web site, and setting out the place on that web site where the document may be accessed and how it may be accessed by that person (s 45(2C)(d) (as so added)); and (5) the published document is in a form sufficiently permanent to be used for subsequent reference (s 45(2C)(e) (as so added)). Where a document is given to or served on a person in accordance with s 45(2C) (as added), the document is, unless the contrary is proved, to be deemed to have been given to or served on that person at the same time as the notice required to be given under s 45(2C)(d) (as added) is given: s 45(2D) (as so added). A person who has an agreement with the Secretary of State or an authorised person under s 45(2C)(a) (as added) may give notice withdrawing that agreement: s 45(2F) (as so added). See also note 8 supra. For the meaning of 'authorised person' see PARA 725 note 1 ante.

11 Ie under ibid s 29: see PARA 725 ante.

12 For the meaning of 'master' see PARA 713 note 6 ante.

13 Aviation and Maritime Security Act 1990 s 45(8). However, except as provided by s 29(3) (see PARA 725 ante), the master is not obliged by virtue of s 45(8) to comply with the notice: s 45(8). Where any document is to be served (for the purposes of s 45(8) or otherwise) on the master of a ship, it is to be treated as duly served

if it is left on board that ship with the person being or appearing to be in command or charge of the ship: s 45(9).

UPDATE

712-738 Protection of Harbour Areas Against Acts of Violence

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/ (6) POWERS IN RELATION TO NATIONAL DEFENCE/739. Powers exercisable in relation to harbour authorities in the interests of national defence.

(6) POWERS IN RELATION TO NATIONAL DEFENCE

739. Powers exercisable in relation to harbour authorities in the interests of national defence.

As from a day to be appointed¹, the Secretary of State² has the following powers. If it appears to the Secretary of State that there is anything which a harbour authority³ ought in the interests of national defence: (1) to have power to do in connection with any harbour⁴ which it is engaged in improving, maintaining or managing⁵; or (2) to be required to do in connection with any such harbour⁶, he may authorise or direct the authority to do that thing⁷. No limitation on the powers of a harbour authority contained in any statutory provision⁸, whenever passed or made, prevents the authority from acting in accordance with such an authorisation or direction⁹.

A harbour authority or any other person¹⁰ who suffers injury, loss or damage in consequence of anything done in pursuance of such an authorisation or direction is entitled to receive from the Secretary of State such compensation¹¹ as may be agreed or as may, in default of agreement, be determined by arbitration to be just having regard to all the circumstances of the particular case¹².

1 The Transport Act 1982 s 66 comes into force on a day to be appointed: see s 76(2). At the date at which this volume states the law no such day had been appointed.

2 As to the Secretary of State see PARA 603 ante.

3 'Harbour authority' has the same meaning as in the Harbours Act 1964 (see PARA 619 ante): Transport Act 1982 s 66(7).

4 'Harbour' has the same meaning as in the Harbours Act 1964 (see PARA 611 ante): Transport Act 1982 s 66(7).

5 Ibid s 66(1)(a).

6 Ibid s 66(1)(b).

7 Ibid s 66(1). Any authorisation or direction given to a harbour authority by the Secretary of State under s 66(1) must be in writing; and it is the duty of any harbour authority to comply with any directions given to it under that provision: s 66(6). For the meaning of 'writing' see PARA 605 note 3 ante.

8 'Statutory provision' has the same meaning as in the Harbours Act 1964 (see PARA 628 note 9 ante): Transport Act 1982 s 66(7).

9 Ibid s 66(2).

10 For the meaning of 'person' see PARA 605 note 4 ante.

11 Any compensation so payable by the Secretary of State is to be paid out of money provided by Parliament: Transport Act 1982 s 66(5). As to the provision of money by Parliament see PARLIAMENT vol 78 (2010) PARA 804.

12 Ibid s 66(3). An arbitration under s 66(3) is, unless otherwise agreed, the arbitration in England and Wales or Northern Ireland, of a single arbitrator to be appointed by the Lord Chancellor: s 66(4)(a). As to the appointment of such an arbitrator see the Constitutional Reform Act 2005 ss 85-93; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. The function of the Lord Chancellor under the Transport Act s 66(4) is a 'protected function' and as such may not be transferred, modified, abolished etc by an order under the Constitutional Reform Act 2005 s 19(1): see s 19(5), Sch 7 para 4 Head A; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to arbitration generally see ARBITRATION vol 2 (2008) PARA 1201 et seq.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(7) MISCELLANEOUS POWERS AND DUTIES OF HARBOUR AUTHORITIES/740. Appointment of officers.

(7) MISCELLANEOUS POWERS AND DUTIES OF HARBOUR AUTHORITIES

740. Appointment of officers.

The power of harbour authorities¹ to appoint a collector of rates², measuring staff³ and harbour masters⁴ is discussed elsewhere in this title. A harbour authority also has power to appoint a clerk or secretary⁵ and, in some cases, to appoint police constables⁶. There is a statutory obligation to employ staff for the operation of cranes⁷, and a general power to appoint other necessary staff will be implied⁸ except where it is expressly contained in local legislation⁹.

1 For the meaning of 'harbour authority' see PARA 619 ante.

2 As to the collector of rates see PARA 673 ante.

3 As to the appointment of meters and weighers see PARA 677 ante.

4 As to the appointment of harbour masters see PARA 690 ante. As to the Queen's harbour master see PARA 693 ante.

5 Local legislation frequently incorporates an express power to appoint a clerk or secretary. In the absence of an express provision there is clearly an implied power for this purpose.

6 See PARA 759 post.

7 See PARA 663 ante.

8 The duty to conserve ports (see PARA 696 ante) necessarily involves the employment of sufficient staff to carry out that duty. The power to make byelaws (see PARA 687 ante) regulating the conduct of porters and carriers employed by a harbour authority implies a power to employ them.

9 A duty to improve, administer and maintain a harbour implies a power to appoint necessary staff: see eg the Port of London Act 1968 s 5; and PARA 625 ante.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(7) MISCELLANEOUS POWERS AND DUTIES OF HARBOUR AUTHORITIES/741. Land and property.

741. Land and property.

Statutory powers for the compulsory acquisition of land are frequently included in the local legislation of harbour authorities¹. A harbour authority² may for the purposes of any of its statutory powers or statutory duties³ acquire by agreement any land⁴ wherever it is situated⁵. The local legislation of a harbour authority usually contains a power for the authority to dispose of land⁶.

1 See the Harbours, Docks and Piers Clauses Act 1847 s 6 (amended by the Compulsory Purchase Act 1965 ss 39(4), 40(3), Sch 8 Pt III). The provisions of the Harbours, Docks and Piers Clauses Act 1847 only apply where they are incorporated in local legislation: see PARA 602 ante. There are detailed statutory provisions governing the method of assessment of compensation: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.

2 For the meaning of 'harbour authority' see PARA 619 ante.

3 For the meanings of 'statutory powers' and 'statutory duties' see PARA 605 note 5 ante; definitions applied by the Docks and Harbours Act 1966 s 50(1).

4 For the meaning of 'land' see PARA 605 note 8 ante; definition applied by *ibid* s 50(1).

5 *Ibid* s 38(1).

6 A power to dispose of property vested in a harbour authority for the purposes of its harbour which is no longer required for those purposes may be conferred on a harbour authority by harbour revision order: see the Harbours Act 1964 s 14(1), Sch 2 para 9; and PARA 628 ante. As to harbour revision orders generally see PARA 628 et seq ante.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(7) MISCELLANEOUS POWERS AND DUTIES OF HARBOUR AUTHORITIES/742. Power to carry out harbour operations.

742. Power to carry out harbour operations.

A harbour authority¹ may carry out, either within the limits within which it has jurisdiction or on harbour land², any harbour operations³. Every statutory harbour authority⁴ has power to carry out harbour operations consisting of the marking or lighting of a harbour⁵ either within the authority's area⁶ or on harbour land⁷.

1 For the meaning of 'harbour authority' see PARA 619 ante.

2 For the meaning of 'harbour land' see PARA 605 note 8 ante; definition applied by the Docks and Harbours Act 1966 s 50(1).

3 *Ibid* s 38(2). There is excepted from this power the marking or lighting of a harbour or any part of it: see s 38(2). However, this exception is, in effect, nullified by the Merchant Shipping Act 1995 s 201(1) (as amended): see the text to notes 4-7 *infra*. For the meaning of 'harbour operations' see PARA 605 note 8 ante; and for the meaning of 'harbour' see PARA 611 ante (definitions applied by the Docks and Harbours Act 1966 s 50(1)). See *R (on the application of Looe Fuels Ltd) v Looe Harbour Commissioners* [2007] All ER (D) 263 (Apr) (on the interpretation of the local Act establishing the harbour authority, it did not have powers to operate a facility to sell fuel to vessels using the harbour).

4 For the meaning of 'statutory harbour authority' see PARA 619 note 5 ante.

5 For the meaning of 'harbour' in this context see PARA 611 ante.

6 'Area' means the area or areas inside the limits within which the authority's statutory powers and duties as a harbour authority are exercisable: Merchant Shipping Act 1995 s 193(4)(b) (amended by the Merchant Shipping and Maritime Security Act 1997 Sch 6 para 6).

7 Merchant Shipping Act 1995 s 201(1), (2) (s 201(1) amended by the Merchant Shipping and Maritime Security Act 1997 Sch 6 para 8).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(7) MISCELLANEOUS POWERS AND DUTIES OF HARBOUR AUTHORITIES/743. Power to provide inland clearance depots.

743. Power to provide inland clearance depots.

A harbour authority¹ may provide, maintain and operate, either alone or together with any other person² and either on harbour land³ or, with the consent of the Secretary of State⁴, elsewhere, depots for the sorting of goods⁵, with facilities for the reception, storage, weighing and handling of goods⁶. A harbour authority which is maintaining a depot for the sorting of goods may make and recover from the persons using the depot, or any services or facilities provided there, reasonable charges for their use⁷.

1 For the meaning of 'harbour authority' see PARA 619 ante; definition applied by the Docks and Harbours Act 1966 s 50(1).

2 For the meaning of 'person' see PARA 605 note 4 ante. It was stated by the government spokesman in the House of Lords on the report stage of the Bill for the Docks and Harbours Act 1966 that the expression 'person' is wide enough to include a consortium of harbour authorities: 276 HL Official Report (5th series) 26 July 1966, col 700.

3 For the meaning of 'harbour land' see PARA 605 note 8 ante; definition applied by the Docks and Harbours Act 1966 s 50(1).

4 As to the Secretary of State see PARA 603 ante. This provision, as enacted, refers to 'the minister', who is defined as the Minister of Transport: see *ibid* s 50(1); Harbours Act 1964 s 57(1). As to this minister and the devolution of his powers to the Secretary of State see PARA 603 ante.

5 For the meaning of 'goods' see PARA 611 note 5 ante; definition applied by the Docks and Harbours Act 1966 s 50(1).

6 *Ibid* s 36(1). The authority may do anything appearing to it to be requisite, convenient or advantageous for or in connection with the discharge of this function: s 36(1). Notwithstanding anything in the Harbours Act 1964 s 14(2)(b) (see PARA 628 ante) or s 16(5) (see PARA 645 ante) (conditions precedent for making harbour revision orders and harbour empowerment orders), a harbour revision order or a harbour empowerment order may be made if the minister proposing to make it is satisfied that the making of the order is desirable in the interests of securing the efficient operation of a depot for the sorting of goods which are to be loaded or have been unloaded in the harbour to which the order relates and, in the case of a harbour revision order, that there has been such an application for the order as is mentioned in s 14(2)(a) (see PARA 628 ante): Docks and Harbours Act 1966 s 36(2). For the meaning of 'harbour' see PARA 611 ante. As to the general power to provide warehouses etc see PARA 663 ante.

7 *Ibid* s 36(3). Nothing in s 36 affects the power of the Commissioners for Revenue and Customs under enactments relating to revenue and customs to approve places for the loading, unloading, deposit, keeping or securing of goods or the conditions and restrictions subject to which approval may be given to any such places: s 36(5) (amended by virtue of the Commissioners for Her Majesty's Revenue and Customs Act 2005 s 50). As to Her Majesty's Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900. For the meaning of 'enactment' see PARA 628 note 26 ante. As to approved wharfs and transit sheds see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARAS 936, 940.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(7) MISCELLANEOUS POWERS AND DUTIES OF HARBOUR AUTHORITIES/744. Power to acquire harbour businesses.

744. Power to acquire harbour businesses.

A harbour authority¹ may acquire by agreement any business or undertaking which consists wholly or mainly of the carrying out of activities relating to harbours² or of the provision, maintenance or operation of any depot for the sorting of goods³, or so much of any business or undertaking as consists of the carrying out of activities relating to harbours or of the provision, maintenance or operation of such a depot⁴. A harbour authority may also subscribe for or acquire any securities⁵ of a body corporate which is wholly or mainly engaged, or which it is proposed should become engaged, in carrying out activities relating to harbours or in providing, maintaining or operating any such depot⁶.

1 For the meaning of 'harbour authority' see PARA 619 ante; definition applied by the Docks and Harbours Act 1966 s 50(1). The provisions of s 37 (as amended) do not apply to the British Waterways Board: see the Docks and Harbours Act 1966 s 37(1) (amended by the Transport and Works Act 1992 s 63(2)(a)); Harbours Act 1964 s 57(1). As to the British Waterways Board see WATER AND WATERWAYS vol 101 (2009) PARA 725 et seq. The Docks and Harbours Act 1966 s 37 (as amended) applies to Associated British Ports: see the Transport Act 1981 s 14(1), Sch 4 para 1(2)(c). As to Associated British Ports see PARA 622 ante.

2 For the meaning of 'harbour' see PARA 611 ante; definition applied by the Docks and Harbours Act 1966 s 50(1).

3 I.e. a depot such as is mentioned in *ibid* s 36: see PARA 743 ante.

4 *Ibid* s 37(1) (as amended: see note 1 *supra*).

5 'Securities' means, in relation to a body corporate, any shares, stock, debentures, debenture stock and any other security of a like nature, of the body corporate: *ibid* s 37(4). As to bodies corporate see COMPANIES; CORPORATIONS.

6 *Ibid* s 37(2) (amended by the Transport and Works Act 1992 s 63(2)(b)). Nothing in the Docks and Harbours Act 1966 s 37(2) (as amended) is to be construed as authorising a harbour authority to delegate to another body any function that it could not delegate apart from that provision: s 37(2A) (added by the Transport and Works Act 1992 s 63(2)(c)). A harbour authority may be authorised to delegate functions, other than specified powers and duties, by a harbour revision order (as to which see PARA 628 et seq ante). As to the power of harbour authorities to borrow for the purposes of the Docks and Harbours Act 1966 s 37 see s 39 (as amended); and PARA 679 et seq ante.

UPDATE

744 Power to acquire harbour businesses

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/ (8) LIABILITIES/(i) Liabilities of Harbour Authorities/745. Liability for negligence generally.

(8) LIABILITIES

(i) Liabilities of Harbour Authorities

745. Liability for negligence generally.

Subject to the terms of its local legislation, a harbour authority¹ which has power to levy dues² for the use of a harbour must use reasonable care to see that the harbour is in a fit condition for a vessel to resort to it³, and that the warehouses and wharfs⁴ are fit to receive cargo⁵, and cannot by delegating its duty⁶ in this respect absolve itself from the consequences of negligence⁷.

1 As to harbour authorities see PARA 619 et seq ante.

2 All harbour authorities have power to levy dues: see the Harbours Act 1964 s 26; and PARA 666 ante. However, local statutory provisions may provide for freedom from dues: see s 26(1), (2); and PARA 666 ante.

3 *Parnaby v Lancaster Canal Co* (1839) 11 Ad & El 223, Ex Ch; *Mersey Docks and Harbour Trustees v Gibbs* (1866) LR 1 HL 93; *The Calliope* [1891] AC 11, HL; *The Devon* (1923) 16 Asp MLC 268 (lack of reasonable care in not dredging up old rope); *St Just Steamship Co Ltd v Hartlepool Port and Harbour Comrs* (1929) 34 Ll L Rep 344 (failure of harbour authority to exercise reasonable care and skill in identifying position of, and on dispersing, wreck). See also *The Neptun* [1938] P 21. A harbour authority is not liable for damage caused by an obstruction which it is not aware of and could not reasonably be expected to be aware of: *Queens of the River Steamship Co Ltd v Easton, Gibb & Co and the River Thames Conservators* (1907) 96 LT 901, CA. The harbour and its machinery must be reasonably safe for persons doing business on board vessels in the harbour: *Smith v London and St Katharine Docks Co* (1868) LR 3 CP 326; and see *The Burlington* (1895) 8 Asp MLC 38, CA (berthing vessel at unsafe berth in the channel of the harbour); *Robertson v Portpatrick and Wigtownshire Joint Committee* 1919 SC 293, Ct of Sess; *Cormack (Owner of SS Colinton) v Dundee Harbour Trustees* 1930 SC 112, Ct of Sess (defective berth; harbour authority failed to establish reasonable care); *SS Albatross (Owners) v Ford Motor Co and Port of London Authority* (1936) 19 Asp MLC 1 (port authority negligent in placing anchor near berth so as to make berth unsafe without notice; owners of jetty not liable); *The Unique* [1939] WN 60 (barge underpinned at jetty when tide rose; unsafe berth). As to the harbour conservancy functions see PARA 696 ante. As to the liability of dock and wharf owners with respect to the use of docks and berths see PARA 750 et seq post.

4 As to the liabilities of dock owners and wharfingers see PARA 750 et seq post.

5 See *Liebigs Extract of Meat Co Ltd v Mersey Docks and Harbour Board and Walter Nelson & Son Ltd* [1918] 2 KB 381, CA.

6 As to the liability of the authority for the acts or orders of its employees see PARA 747 post.

7 *The Bearn* [1906] P 48, CA. It is no defence that the bad state of the harbour could not be detected, when the harbour authority has neglected its duty by purporting to delegate the duty of sounding the harbour to local pilots who are not its employees: *The Bearn* supra. As to negligence generally see NEGLIGENCE.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/ (8) LIABILITIES/(i) Liabilities of Harbour Authorities/746. Liability for depth of approaches.

746. Liability for depth of approaches.

Where a harbour authority¹ holds out that there is a certain depth of water at a part of the harbour over which vessels may be obliged to pass, it must use reasonable care to provide that the approaches to that part are sufficient, under normal conditions, to enable a vessel to pass over it² or give warning that the advertised depth has not been maintained³.

1 As to harbour authorities see PARA 619 et seq ante.

2 *Bede Steamship Co v River Wear Comrs* [1907] 1 KB 310, CA, where silt was allowed to accumulate at the entrance to a dock, over the sill of which the authority advertised a certain depth of water. However, a harbour authority has been held not to owe to the owner of jetties placed under licence granted by the authority a duty to maintain a particular depth of water near or leading to the jetties: *Tate & Lyle Industries Ltd v Greater London Council* [1983] 2 AC 509, [1983] 1 All ER 1159, HL. As to the liability of dock owners see further PARA 750 et seq post.

3 *Workington Harbour and Dock Board v The Towerfield (Owners)* [1951] AC 112, [1950] 2 All ER 414, HL (failure to give adequate warning that advertised width and depth of channel was not maintained).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/ (8) LIABILITIES/(i) Liabilities of Harbour Authorities/747. Liability for acts and orders of employees.

747. Liability for acts and orders of employees.

A harbour authority¹ is liable for any damage that may arise from the acts and directions of its employees when within the scope of their duty for, when a vessel is within the jurisdiction of a harbour authority by law empowered to give orders², the orders must be obeyed unless it is obvious that in following them there is danger, in which case they may be disregarded³. However, where a notice is displayed on the authority's premises to the effect that vessels and persons using the harbour facilities do so at their own risk, the authority may claim exemption from liability for the negligence of its employees according to the terms of the notice⁴. A harbour authority is not liable for the acts of its employee when not acting as such but in another capacity, even though he is licensed by the authority so to act⁵, or where the authority's employee acts on misrepresentations made to the authority by the ship owner's employees⁶.

1 As to harbour authorities see PARA 619 et seq ante.

2 As to the duty of harbour and dock masters on giving orders and the duty of those in charge of vessels to obey them; and as to liability for damage caused by a collision when a ship is acting under such orders see SHIPPING AND MARITIME LAW vol 94 (2008) 814.

3 *The Bilbao* (1860) Lush 149; *The Belgic* (1875) 2 PD 57n (affd (1876) 2 PD 59n, CA); *The Cynthia* (1876) 2 PD 52; *The Rhosina* (1885) 10 PD 131, CA (harbour master ordering anchor to be dropped upon which vessel grounded); *The Apollo* [1891] AC 499, HL (informing master that he might safely ground his vessel in a dock entrance and permitting him to use it for that purpose); *Reney v Kirkcudbright Magistrates* [1892] AC 264, HL (ordering vessel to a place where it grounded and suffered damage); *East London Harbour Board v Caledonia Landing, Shipping and Salvage Co Ltd*, *East London Harbour Board v Colonial Fisheries Co Ltd* [1908] AC 271, PC (removing vessel and negligently re-mooring it); *The Bien* [1911] P 40 (mooring vessel on an oyster bed); *Robertson v Portpatrick and Wigtownshire Joint Committee* 1919 SC 293, Ct of Sess (where it was held that the harbour authority was liable for the negligence of the harbour master in failing to warn the master of a vessel of a hidden danger); *The Framlington Court* (1936) 56 Ll L Rep 200 (ordering vessel to get under way when dock entrance obstructed). When both the harbour authority's employee and the claimant have been negligent, it seems that the maritime rule as to division of loss (see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 800 et seq) does not apply (see *The Rockabill* [1937] P 93, [1937] 1 All ER 191, CA), but the statutory provisions which nullify the common law rule as to the effect of contributory negligence will apply (see NEGLIGENCE vol 78 (2010) PARA 75). As to the effect of a clause in a towage contract indemnifying the authority see *The Carlton* [1931] P 186; *The Lindenhall* [1945] P 8, CA (damage not arising 'in connection with the towage' and indemnity clause applied only to third party claims). As to indemnity clauses in towage contracts see generally SHIPPING AND MARITIME LAW vol 93 (2008) PARA 590.

4 See *Forbes, Abbott and Lennard Ltd v Great Western Rly Co* (1927) 17 Asp MLC 347, CA; *Wickett v Port of London Authority* [1929] 1 KB 216; *The Ballyalton* [1961] 1 All ER 459, [1961] 1 WLR 929. However, a person cannot by reference to any contract term or to a notice given to persons generally or to particular persons exclude or restrict his liability for death or personal injury resulting from negligence: Unfair Contract Terms Act 1977 s 2(1). Further, in the case of loss or damage, a person cannot exclude or restrict his liability for negligence except in so far as the term or notice satisfies the requirement of reasonableness: s 2(2). For the

meaning of 'person' see PARA 605 note 4 ante. As to the requirement of reasonableness see s 11. See further CONTRACT vol 9(1) (Reissue) PARA 820 et seq.

5 *Shaw, Savill and Albion Co v Timaru Harbour Board* (1890) 15 App Cas 429, PC (no liability for deputy harbour master licensed as a pilot by harbour authority when acting as a duly qualified pilot). As to pilots see generally SHIPPING AND MARITIME LAW vol 93 (2008) PARA 562 et seq.

6 *Lloyd v Iron* (1865) 4 F & F 1011. It is the duty of the master of a vessel to bring to the notice of the harbour master any peculiarity as to the draught and build of his vessel: *Lloyd v Iron* supra.

UPDATE

747 Liability for acts and orders of employees

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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748. Liability for neglect.

Where a harbour authority¹ undertakes for reward to perform services to a vessel coming to its harbour, it is liable for any breach of agreement to perform these services² or for any neglect on its part to exercise reasonable care and skill in the performance of these services³. Where a harbour authority undertakes a duty, although imposed on it by statute, towards a vessel in its jurisdiction, it is liable for the consequences of any neglect of that duty⁴.

1 As to harbour authorities see PARA 619 et seq ante.

2 *South Wales and Liverpool Steamship Co Ltd v Nevill's Dock and Rly Co Ltd, Nevill's Dock and Rly Co Ltd v Maatschappij Steamship Bestevaer, Rotterdam* (1913) 12 Asp MLC 328; and see *The Rehearo* [1933] P 286.

3 *The Ratata* [1898] AC 513, HL (lightening and towing a vessel to the authority's docks); *Liebig's Extract of Meat Co Ltd v Mersey Docks and Harbour Board and Walter Nelson & Son Ltd* [1918] 2 KB 381, CA; and see *Loader v London and India Docks Joint Committee* (1891) 8 TLR 5, CA. A harbour authority does not warrant the efficiency of its moorings, but it must exercise reasonable care and skill to maintain their efficiency; inspection must be adequate in relation to the risk of deterioration: see *The Quercus* [1943] P 96, where the breaking of the mooring chain on hire from the authority raised a prima facie case of negligence.

4 *The Douglas* (1882) 7 PD 151, CA (undertaking to light and buoy a sunken wreck); *The Utopia* [1893] AC 492, PC; *Anchor Line (Henderson Bros) Ltd v Dundee Harbour Trustees* (1922) 38 TLR 299, HL; *The Tramontana II (Owners) v Ministry of Defence and Martin* [1969] 2 Lloyd's Rep 94.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/ (8) LIABILITIES/(i) Liabilities of Harbour Authorities/749. Limitation of liability and of actions.

749. Limitation of liability and of actions.

The liability of a harbour authority¹, a conservancy authority² and the owners of any dock or canal³ for any loss or damage caused to any ship⁴, or to any goods, merchandise or other thing whatsoever on board any ship is limited⁵. However, this does not exclude liability for any loss or damage resulting from any personal act or omission committed with the intent to cause such a loss, or recklessly and with knowledge that such loss would probably result⁶.

The periods of limitation of actions brought against harbour authorities, conservancy authorities and dock owners are the same as in the case of any other person not under disability⁷.

1 For the meaning of 'harbour authority' see PARA 619 ante.

2 'Conservancy authority' includes all persons entrusted with the function of conserving, maintaining or improving the navigation of a tidal water: Merchant and Shipping Act 1995 s 313(1). 'Tidal water' means any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tides, and not being a harbour: ss 255(1), 313(1). For the meaning of 'harbour' see PARA 611 ante. For the meaning of 'person' see PARA 605 note 4 ante.

3 'Owners of any dock or canal' includes any authority or person having the control and management of any dock or canal, as the case may be; and 'dock' includes wet docks and basins, tidal docks and basins, locks, cuts, entrances, dry docks, graving docks, gridirons, slips, quays, wharves, piers, stages, landing places and jetties: ibid s 191(9). As to the liabilities of dock owners see PARA 750 et seq post.

4 'Ship' includes every description of vessel used in navigation: ibid s 313(1).

5 See ibid s 191(1), (2); and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1064.

6 See ibid s 191(1), (4); and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1064.

7 See the Limitation Act 1980; and LIMITATION PERIODS.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/ (8) LIABILITIES/(ii) Liabilities of Dock Owners and Wharfingers/750. Duties of dock and wharf owners with respect to use of docks and berths.

(ii) Liabilities of Dock Owners and Wharfingers

750. Duties of dock and wharf owners with respect to use of docks and berths.

The duty of dock owners¹ to the ships entering and using their docks is, in general, to take reasonable care that such ships may do so in safety, as regards both the ships themselves and the persons connected with their working². If a ship is damaged by an obstruction, such as an accumulation of mud³, or something sunk⁴, or a snag⁵, the dock owners are liable if they either knew of the obstruction and failed to remove it or to give warning of it, or if they had the means of knowing of it and neglected to use those means⁶. Thus, where the owners of a dock opened the dock for public use, when the channels leading to it were in such a state as to be dangerous to ships of large size and there was no notice to the public of the danger and no pointing out of the narrower and deeper channels by buoys or otherwise, the owners were held to have been negligent⁷. The respective duties of a dock owner and the master of a ship depend to some extent on the actual condition and situation of the dock as well as upon the statutes which regulate the dock⁸.

The owner of a wharf who for reward or benefit invites a vessel to berth there impliedly represents that he has taken reasonable care to see that the berth is safe for the vessel to lie at and, if he has not taken such care, it is his duty to give warning that he has not done so⁹.

1 A dock owner may also be a harbour authority. As to the liabilities of harbour authorities see PARAS 745-749 ante. As to harbour authorities see PARA 619 et seq ante.

2 *Parnaby v Lancaster Canal Co* (1839) 11 Ad & El 223 at 243, Ex Ch; approved in *Mersey Docks and Harbour Trustees v Gibbs* (1866) LR 1 HL 93 (affg *Mersey Docks and Harbour Board v Penhallow* (1861) 7 H & N 329, Ex Ch). See also *Pyman Steamship Co v Hull and Barnsley Rly Co* [1914] 2 KB 788 at 796 (the prima facie duty of the dock owner of a dry dock in supplying blocks for the support of a vessel is not an absolute duty to provide blocks reasonably fit for the purpose for which they are to be used, but only a duty to take due care to see that they are reasonably fit) (affd [1915] 2 KB 729, CA); *Liebig's Extract of Meat Co Ltd v Mersey Docks and Harbour Board and Walter Nelson & Son Ltd* [1918] 2 KB 381, CA; *The Pass of Leny* (1936) 19 Asp MLC 23; cf *Bede Steamship Co v River Wear Comrs* [1907] 1 KB 310, CA. In *The Lancastrian* (1915) 32 TLR 117 (affd (1916) 32 TLR 655, CA), it was held that a dry dock owner accepting a ship which was not of unusual construction without making inquiry was liable in not providing a sufficient number of blocks. It seems that if a ship is of unusual construction it is the duty of the ship owners to inform the dock owners and it is not the duty of the dock owners to make inquiries. In the absence of contractual responsibility, liability for eg unevenness of a berth lies in negligence: see *The Ballyalton* [1961] 1 All ER 459, [1961] 1 WLR 929. As to the effect of the display of a notice disclaiming liability see PARA 747 note 4 ante. For an instance of a clause in a contract giving exemption from liability see *Pyman Steamship Co v Hull and Barnsley Rly Co* supra; but it seems that the clause would not have been held to be effective had the duty of the dry dock owner been an absolute one, and since the coming into force of the Unfair Contract Terms Act 1977 such a clause would fall to be considered in relation to the provisions of that Act: see NEGLIGENCE vol 78 (2010) PARA 74. As to the effect of an indemnity clause in a towage contract where tugs are provided to assist vessels in dock see *The Carlton* [1931] P 186; *The Lindenhall* [1945] P 8, CA (where, in both cases, it was held that the damage sustained did not arise in connection with the towage, and that the clause in the contract gave no protection against claims by the owners of the vessels towed but only against third party claims).

3 *Mersey Docks and Harbour Board v Penhallow* (1861) 7 H & N 329, Ex Ch (affd sub nom *Mersey Docks and Harbour Trustees v Gibbs* (1866) LR 1 HL 93); followed and applied in *Campbell v Hornsby* (1873) IR 7 CL 540, Ex Ch; *Bede Steamship Co v River Wear Comrs* [1907] 1 KB 310, CA.

4 *Parnaby v Lancaster Canal Co* (1839) 11 Ad & El 223 at 243, Ex Ch (sunken barge); *White v Phillips* (1863) 15 CBNS 245 (camp-shed); cf *Curling v Wood* (1847) 16 M & W 628, Ex Ch; *Forbes v Lee Conservancy Board* (1879) 4 Ex D 116.

5 *R v Williams* (1884) 9 App Cas 418, PC.

6 *Mersey Docks and Harbour Trustees v Gibbs* (1866) LR 1 HL 93; *The Moorcock* (1889) 14 PD 64, CA; *SS Albatross (Owners) v Ford Motor Co Ltd and Port of London Authority* (1936) 19 Asp MLC 1; cf *Butler v M'Alpine* [1904] 2 IR 445, Ir CA.

7 *Thompson v North Eastern Rly Co* (1860) 2 B & S 106; affd (1862) 2 B & S 119, Ex Ch (even if those in charge of the ship had known of the danger and exposed the ship to it the dock owners might still have been liable, unless the exposing of the ship to the danger had been in want of common or ordinary prudence on the part of those in charge; but it must now be in question whether this formulation of a ship owner's responsibility in relation to the safety of his own ship would now fall to be modified in light of the Law Reform (Contributory Negligence) Act 1945: see NEGLIGENCE vol 78 (2010) PARA 75 et seq); cf *Clayards v Dethick and Davis* (1848) 12 QB 439; *Williams v Swansea Harbour Trustees* (1863) 14 CBNS 845; *Bede Steamship Co v River Wear Comrs* [1907] 1 KB 310, CA. In *The Apollo* [1891] AC 499, HL, where part of a dock (the lock entrance) was obviously not a dry dock but was represented by a proper representative of the dock owners to be fit for use as such (if the water was drawn off), the proper representative was in breach of duty to the ship owner for permitting the use of the lock as a dry dock when he knew or ought to have known of the existence of a sill projecting above the bottom of the lock, and the dock owners were liable for damage to the ship by grounding on the sill; but they would not have been liable if their representative had said 'you may try the experiment if you like, but I personally do not know what the bottom of the lock is like' (at 509 per Lord Halsbury LC).

8 *The Excelsior* (1868) LR 2 A & E 268 (dock master having discretionary power under statute to change the station of a ship, and using his discretion reasonably having regard to the interests of all shipping using the harbour, was not liable for damage to the ship even though, if the interests of the particular ship alone were to be considered, the removal of it was injudicious; damage to the ship and the pier to which it had been moved were attributable to an insufficiency of crew left on board by the ship's master and by his refusal to lower yards and masts when directed to do so); cf *Thompson v North Eastern Rly Co* (1862) 2 B & S 106 (affd (1862) 2 B & S 119, Ex Ch); and see PARA 745 ante.

9 *The Moorcock* (1889) 14 PD 64, CA (wharfinger inviting vessel to use unsafe berth); *The Grit* [1924] P 246 (the fact that dues are not charged does not relieve the wharfinger from liability); *The Empress* [1923] P 96 (invitation by defendant wharfingers to ship owners to discharge onto a wharf belonging to another wharfinger where the berth was uneven, but neither the ship owners nor the defendant knew of or had any reason to

suspect this); *The Hayle* [1929] P 275 (printed notice of conditions not part of contract and no defence); *The Kate* [1935] P 100 (lessee of quay entitled to indemnity for damages, payable on account of defective berth, from owners of quay and berth who had covenanted to keep them in good order); *The Sound Fisher* (1937) 59 Ll L Rep 123, CA (onus on owners of berth and wharf to show exercise of reasonable care); *Firth Shipping Co v Earl of Morton's Trustees* 1938 SC 177, Ct of Sess (grantee of a free port bound to warn shipping where dues are insufficient to maintain a safe berth); *The Neapolis II, Alberta Shipping Ltd v Briton Ferry Stevedoring Co Ltd* [1980] 2 Lloyd's Rep 369 (wharf operators negligent in failing to warn ship's master of unsafe berth); cf *The Pass of Leny* (1936) 19 Asp MLC 23 (owners of wharf and berth not liable for damage caused by inability of berth to hold up ship as they did not warrant safety of berth and had taken all reasonable steps to make it safe); *Onesimus Dorey & Sons Ltd v Headley's Wharf Ltd and William Ashby Ltd* [1939] 3 All ER 23, CA (no representation by either of the two adjoining wharfingers as to the safety of the berth because, as to one of them, he had not on the facts given an invitation and, as to the other, he had given either no invitation or none for a vessel of such length as the plaintiff's).

UPDATE

750 Duties of dock and wharf owners with respect to use of docks and berths

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/ (8) LIABILITIES/(ii) Liabilities of Dock Owners and Wharfingers/751. Duty of dock owner with respect to repair of ship.

751. Duty of dock owner with respect to repair of ship.

Where the proprietor of the dock undertakes the repair of a ship he must take care to have it properly attended to¹.

¹ *Leck v Maestaer* (1807) 1 Camp 138. In *Hibbs v Ross* (1866) LR 1 QB 534, it was stated that those in charge of a ship are generally in the employ of the ship owner (hence it was a permissible inference that the shipkeeper of a ship laid up in a public dock was so employed, in absence of proof that he was employed by someone else, eg the dock owners). As to the liability of ship repairers for damage sustained by a ship whilst lying in a public dock (of which they were not the proprietors and over which they had no control) see *The Rehearo* [1933] P 286. See also BAILMENT vol 3(1) (2005 Reissue) PARA 70.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/ (8) LIABILITIES/(ii) Liabilities of Dock Owners and Wharfingers/752. Duty with respect to persons using premises.

752. Duty with respect to persons using premises.

The duty of dock owners and wharfingers to persons lawfully on their premises in respect of dangers due to the state of, or to things done or omitted to be done on, those premises is, as in the case of occupiers of premises generally, the statutory common duty of care¹ which an occupier owes to all his visitors², except in so far as he is free to and does extend, restrict, modify or exclude that duty to any visitors by agreement or otherwise³. The question whether any duty is owed by a dock owner or wharfinger to persons other than his visitors⁴ (and, if so, what that duty is) is determined as in the case of occupiers of premises generally⁵.

1 lie under the Occupiers' Liability Act 1957: see NEGLIGENCE vol 78 (2010) PARA 29 et seq. The statutory rules as to this duty supersede those of the common law except as to the persons on whom such a duty is imposed or to whom it is owed: see s 1(1), (2); and note 3 infra.

2 The persons who are to be treated as an occupier's visitors are the same as those who would at common law be treated as his invitees or licensees: *ibid* s 1(2). For instances of persons who have been held to be invitees of a dock owner see *Smith v London and St Katharine Docks Co* (1868) LR 3 CP 326 (persons having business on board a ship who use as a means of access a gangway placed by the dock owner); *Heaven v Pender* (1883) 11 QBD 503, CA (where a workman who was employed by a master painter engaged by the ship owner, and who was working on staging erected by the dock owner outside the ship in his dry dock, was injured because the staging was unfit for its use).

3 See the Occupiers' Liability Act 1957 ss 1(1), 2(1). See further NEGLIGENCE vol 78 (2010) PARA 38.

4 lie any duty in respect of any risk of their suffering injury on his premises by reason of any danger due to the state of the premises or to things done or omitted to be done on them: see the Occupiers' Liability Act 1984 s 1(1)(a).

5 See the Occupiers' Liability Act 1984; and NEGLIGENCE vol 78 (2010) PARA 40.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/ (8) LIABILITIES/(ii) Liabilities of Dock Owners and Wharfingers/753. Duty in respect of goods landed.

753. Duty in respect of goods landed.

Dock owners are under a duty to take reasonable care that quays and sheds are reasonably fit for the reception of cargoes discharged from ships entering and using their docks¹. If they act as warehousemen and wharfingers, their duty, apart from any special contract that may be made, is to take reasonable and ordinary care in dealing with the goods received by them in their capacity of warehousemen and wharfingers².

1 *Liebig's Extract of Meat Co Ltd v Mersey Docks and Harbour Board and Walter Nelson & Son Ltd* [1918] 2 KB 381, CA.

2 See BAILMENT vol 3(1) (2005 Reissue) PARA 38 et seq; CARRIAGE AND CARRIERS vol 7 (2008) PARA 23. As to lien see LIEN; and see also BAILMENT vol 3(1) (2005 Reissue) PARAS 48, 77; CARRIAGE AND CARRIERS vol 7 (2008) PARA 762.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/ (8) LIABILITIES/(iii) Liabilities of Owners and Masters of Vessels/754. Liability for damage done to a harbour.

(iii) Liabilities of Owners and Masters of Vessels

754. Liability for damage done to a harbour.

Subject to the statutory right to limit his liability for claims in respect of damage to harbour works¹, the owner² of a vessel³ or float of timber is by statute⁴ answerable to the harbour authority⁵ for any damage⁶ done by that vessel or float of timber, or by any person employed about the same, to the harbour, dock or pier⁷, or the quays or works connected with it⁸.

The owner is liable whether negligent or not⁹, and notwithstanding that the negligence of the harbour authority contributed to the damage¹⁰. However, the damage must be caused by action attributable to human agency, so that, where a vessel has been abandoned¹¹ at the time when the damage is done, the owner is not liable; but, with this one exception, the liability is absolute¹².

The master¹³ or person in charge of a vessel or float of timber is also liable to make good any such damage caused by his wilful act or negligence¹⁴. The harbour authority may detain the vessel or float of timber until sufficient security has been given for the amount of damage done¹⁵.

1 See the Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955) art 2(1)(a). The provisions of the Convention are set out in the Merchant Shipping Act 1995 s 185(1), Sch 7 Pt 1, and have the force of law in the United Kingdom: s 185(1). See further SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1042 et seq. For the meaning of 'United Kingdom' see PARA 613 note 1 ante.

2 'Owner' means the registered owner: *BP Exploration Operating Co Ltd v Chevron Shipping Co* [2001] UKHL 50, [2003] 1 AC 197, [2002] 1 All ER (Comm) 1. As to the ownership and registration of ships see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 236 et seq.

3 For the meaning of 'vessel' see PARA 672 note 3 ante.

4 As to liability at common law see note 9 infra.

5 The Harbours, Docks and Piers Clauses Act 1847 s 74 refers to 'the undertakers', for the meaning of which see PARA 602 note 2 ante. In practice, the undertakers will always be a harbour authority within the meaning of the Harbours Act 1964: see PARA 619 ante.

6 The damage recoverable is confined to that physically done to the harbour, dock or pier, or to the quays or works connected therewith and does not include consequential loss: *Workington Harbour and Dock Board v The Towerfield (Owners)* [1951] AC 112, [1950] 2 All ER 414, HL (loss of revenue through inability to use the harbour not included); *Anglo-Algerian Steamship Co Ltd v Houlder Line Ltd* [1908] 1 KB 659 (owners not liable to another vessel which is prevented from entering the harbour through negligence in damaging the dock gates).

7 For the meaning of 'harbour, dock or pier' see PARA 663 note 3 ante.

8 Harbours, Docks and Piers Clauses Act 1847 s 74. See further note 14 infra. The provisions of the Harbours, Docks and Piers Clauses Act 1847 only apply where they are incorporated in local legislation: see PARA 602 ante. If s 74 is not incorporated in the local legislation providing for the harbour authority, that legislation may make provision to the same or similar effect: see eg the Port of London Act 1968 s 134.

9 *Great Western Rly Co v The Mostyn (Owners)* [1928] AC 57, HL; *The Stonedale No 1 (Owners) v Manchester Ship Canal Co* [1956] AC 1 at 10, [1955] 2 All ER 689 at 693, HL. The primary purpose of the Harbours, Docks and Piers Clauses Act 1847 s 74 is to give the harbour authority a simple and direct method of recovering its expenditure without having to investigate or prove who was in possession of the vessel and actually responsible for the navigation of the vessel at the material time. The registered ownership is easy of ascertainment and, indeed, it is the scheme of the Act that the master of the vessel is under an obligation when called upon to do so to produce the certificate of registry of the vessel (see s 3; and PARA 675 ante): *BP Exploration Operating Co Ltd v Chevron Shipping Co* [2001] UKHL 50 at [88], [2003] 1 AC 197 at [88], [2002] 1 All ER (Comm) 1 at [88] per Lord Hobhouse of Woodborough. A right of action may lie at common law for the cost of removing obstructions caused by negligence, or may lie under statute for damage done independently of negligence: *The Stonedale No 1 (Owners) v Manchester Ship Canal Co* supra.

10 *Workington Harbour and Dock Board v The Towerfield (Owners)* [1951] AC 112, [1950] 2 All ER 414, HL.

11 Abandoned owing to the violence of wind and waves: see *River Wear Comrs v Adamson* (1877) 2 App Cas 743, HL.

12 See *Dennis v Tovell* (1872) LR 8 QB 10; *River Wear Comrs v Adamson* (1877) 2 App Cas 743, HL; *Workington Harbour and Dock Board v The Towerfield (Owners)* [1951] AC 112 at 134, 146-147, 158, [1950] 2 All ER 414 at 426, 433-434, 441, HL. As to the owner's right to recover damages from a third party see PARA 755 post.

13 For the meaning of 'master' see PARA 673 note 10 ante.

14 Harbours, Docks and Piers Clauses Act 1847 s 74. As enacted, liability under s 74 is not imposed if at the time the damage was caused the vessel was under compulsory pilotage: see s 74 proviso. The defence of compulsory pilotage was, however, abolished by what is now the Pilotage Act 1987 s 16. See further SHIPPING AND MARITIME LAW vol 93 (2008) PARA 579. Consequently, the Harbours, Docks and Piers Clauses Act 1847 s 74 proviso, although not expressly repealed, is not now effective: see *Workington Harbour and Dock Board v The Towerfield (Owners)* [1951] AC 112 at 146, 158, [1950] 2 All ER 414 at 433, 441, HL.

15 Harbours, Docks and Piers Clauses Act 1847 s 74. The exercise by a dock or harbour authority of its statutory power to detain a vessel confers on it a possessory lien which overrides all maritime liens: see *Mersey Docks and Harbour Board v Hay, The Countess* [1923] AC 345, 16 Asp MLC 161, HL (a case concerning the similar provisions of the Mersey Dock Acts Consolidation Act 1858 s 94); and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1034. But the lien does not confer priority in the distribution of a limitation fund under the Convention on Limitation of Liability for Maritime Claims (London, 1 to 19 November 1976; TS 13 (1990); Cm 955): see the Merchant Shipping Act 1995 s 185(2), Sch 7 para 9; and SHIPPING AND MARITIME LAW vol 94 (2008) PARAS 1042, 1054. The harbour authority has also a maritime lien and may proceed in rem in the Admiralty Court to recover the damage: *The Merle* (1874) 2 Asp MLC 402.

When the amount claimed as damages does not exceed £50 it may be recovered before two justices, who have power to distrain and, if necessary, to sell the vessel or float of timber causing the damage, and any tackle or furniture of it, in order to satisfy the amount of the damages, costs and charges awarded by them to be paid: Harbours, Docks and Piers Clauses Act 1847 s 75. As regards the Admiralty jurisdiction of the High Court and county court in relation to damage caused by ships striking things other than ships see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 110.

UPDATE

754 Liability for damage done to a harbour

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/ (8) LIABILITIES/(iii) Liabilities of Owners and Masters of Vessels/755. Recovery of damage by owner from third person.

755. Recovery of damage by owner from third person.

When the owner of a vessel¹ or float of timber has had to pay for damage to a harbour or connected works² caused by the wilful act or negligence of the master³ or person in charge, or when the owner of a vessel or goods in any other case has been compelled to pay any penalty or costs by reason of the act or omission of any other person, the person who actually did the damage or committed the offence must repay to the owner the amount of the damage or penalty and costs, together with the costs of proceedings to enforce the repayment⁴.

1 For the meaning of 'vessel' see PARA 672 note 3 ante.

2 The damage such as is mentioned in the Harbours, Docks and Piers Clauses Act 1847 s 74: see PARA 754 ante.

3 For the meaning of 'master' see PARA 673 note 10 ante.

4 Harbours, Docks and Piers Clauses Act 1847 s 76. If the amount of the damage or penalty does not exceed £50, it may be recovered before two or more justices: s 76. The provisions of the Harbours, Docks and Piers Clauses Act 1847 only apply where they are incorporated in local legislation: see PARA 602 ante.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/ (8) LIABILITIES/(iii) Liabilities of Owners and Masters of Vessels/756. Duty to ship's visitors.

756. Duty to ship's visitors.

The statutory rules in relation to an occupier of premises and his visitors¹ apply² to regulate the obligations of a person occupying or having control over any vessel³.

1 The rules enacted by the Occupiers' Liability Act 1957 ss 2, 3, which regulate the duty which an occupier of premises owes to his visitors in respect of dangers due to the state of the premises or to things done or omitted to be done on them: see s 1(1); and NEGLIGENCE vol 78 (2010) PARA 29 et seq. See also PARA 752 ante.

2 The rules apply in like manner and to the like extent as the principles applicable at common law to an occupier of premises and his invitees or licensees would apply: *ibid* s 1(3).

3 See *ibid* s 1(1), (3)(a); and NEGLIGENCE vol 78 (Reissue) PARA 29 et seq. The rules accordingly apply in respect of a vessel within a harbour or dock or at a pier.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(9) ENFORCEMENT AND ADMINISTRATION OF HARBOUR LAW/757. Offences by corporations under the Harbours Act 1964.

(9) ENFORCEMENT AND ADMINISTRATION OF HARBOUR LAW

757. Offences by corporations under the Harbours Act 1964.

Where an offence under the Harbours Act 1964 which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director¹, manager, secretary or other similar officer of the body corporate (or any person who was purporting to act in any such capacity), he, as well as the body corporate, is guilty of the offence and is liable to be proceeded against accordingly².

1 For these purposes, the expression 'director' in relation to a body corporate established by or under an enactment for the purpose of carrying on under national ownership an industry or part of an industry or undertaking, being a body corporate whose affairs are managed by members thereof, means a member of that body corporate: Harbours Act 1964 s 55(2). For the meaning of 'enactment' see PARA 628 note 26 ante.

2 *Ibid* s 55(1). As to bodies corporate see COMPANIES; CORPORATIONS.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(9) ENFORCEMENT AND ADMINISTRATION OF HARBOUR LAW/758. Recovery of penalties and other amounts.

758. Recovery of penalties and other amounts.

The provisions of the Railways Clauses Consolidation Act 1845¹, with respect to: (1) the recovery of damages not specially provided for²; (2) penalties; and (3) the determination of any other matter referred to justices, are incorporated with the Harbours, Docks and Piers Clauses Act 1847 and with the special Act³. Thus damages not specially provided for and penalties

under the Harbours, Docks and Piers Clauses Act 1847 are recoverable in the manner provided by the mentioned provisions of the Railways Clauses Consolidation Act 1845, and other matters referred to justices under the former Act are to be determined in the same manner⁴.

1 The extant provisions of the Railways Clauses Consolidation Act 1845 to which reference is made are: (1) the ascertainment of damages, costs and expenses (see s 140 (as amended)); (2) the procedure in questions of compensation, damages, expenses and charges and other matters (see s 142); (3) the penalty for defacing notice boards used for publishing byelaws or penalties (see s 144 (as amended)); and (4) the summary recovery of penalties (see s 145 (as amended)). See further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 393, 423.

2 The words 'damages not specially provided for' are part of a collective expression used in the Harbours, Docks and Piers Clauses Act 1847 s 92 and in the Railways Clauses Consolidation Act 1845; but it is evident from s 140 (as amended) and s 142 that the expression is for these purposes to be understood as including not only amounts ordinarily describable as damages but also amounts describable as costs, expenses, compensation or charges. For examples of expenses under the Harbours, Docks and Piers Clauses Act 1847, the ascertainment or recovery of which is provided for by the incorporated provisions of the Railway Clauses Consolidation Act 1845, see PARA 691 text to notes 13, 16 ante.

3 Harbours, Docks and Piers Clauses Act 1847 s 92. For the meaning of 'the special Act' see PARA 602 note 2 ante. The provisions of the Harbours, Docks and Piers Clauses Act 1847 only apply where they are incorporated in local legislation: see PARA 602 ante.

4 See *ibid* s 92.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(9) ENFORCEMENT AND ADMINISTRATION OF HARBOUR LAW/759. Maintenance of harbour police forces.

759. Maintenance of harbour police forces.

Any two justices may appoint such persons as are nominated for the purpose by a harbour authority¹ to be special constables² within the limits of the harbour, dock or pier³ and premises of the harbour authority, and within one mile of the same⁴. Every person so appointed must be sworn in by the justices duly to execute the office of constable within the limits⁵. When duly sworn in the constable has the same powers, protections and privileges within the limits, and is subject to the same liabilities, as constables have or are subject to by the general law⁶. Any two justices may dismiss any such constable⁷. Upon dismissal all the powers, protections and privileges vested in the constable cease⁸.

1 The Harbours, Docks and Piers Clauses Act 1847 s 79 refers to 'the undertakers', for the meaning of which see PARA 602 note 2 ante. In practice, the undertakers will always be a harbour authority within the meaning of the Harbours Act 1964: see PARA 619 ante.

2 The special constables described in this provision are not the same as special constables appointed under the Police Act 1996 s 27, as to whom see POLICE vol 36(1) (2007 Reissue) PARA 208 et seq.

3 For the meaning of 'harbour, dock or pier' see PARA 663 note 3 ante.

4 Harbours, Docks and Piers Clauses Act 1847 s 79. The provisions of the Harbours, Docks and Piers Clauses Act 1847 apply only where they are incorporated with local legislation: see PARA 602 ante. Power to appoint constables may be conferred by harbour revision order: see the Harbours Act 1964 s 14(1), Sch 2 para 8; and PARA 628 ante. As to the Port of London police force see the Port of London Act 1968 Pt X (ss 154-160) (as amended).

5 Harbours, Docks and Piers Clauses Act 1847 s 79.

6 Ibid s 79. As to the office of constable see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. Many provisions of general police legislation (principally those of the Police Act 1996) do not apply to private statutory police forces, as these are not police forces within the meaning of that Act: see s 101(1); and POLICE vol 36(1) (2007 Reissue) PARA 102. However, an agreement may be made between the Independent Police Complaints Commission and an authority maintaining a body of constables (other than a police authority within the meaning of the Police Act 1996) for the establishment in relation to that body of procedures corresponding or similar to any of those provided for by or under the Police Reform Act 2002 Pt 2 (ss 9-29): s 26(1). Where no such procedures are in force, the Secretary of State is empowered to establish such procedures by order: see s 26(2). See further POLICE vol 36(1) (2007 Reissue) PARA 347. As to the Independent Police Complaints Commission see POLICE vol 36(1) (2007 Reissue) PARA 316 et seq.

7 Harbours, Docks and Piers Clauses Act 1847 s 80.

8 Ibid s 80. A harbour reorganisation scheme may provide for the dissolution of a body of constables maintained by any of the relevant authorities (ie harbour authorities for the harbours comprised in a group of harbours): see the Harbours Act 1964 s 18(2)(g); and PARA 649 ante.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(9) ENFORCEMENT AND ADMINISTRATION OF HARBOUR LAW/760. Inquiries.

760. Inquiries.

The duty of the Secretary of State¹ to cause inquiries to be held in certain cases is discussed elsewhere in this title². The provisions governing such inquiries are the same as those for local government inquiries³. Those provisions enable the person holding the inquiry to issue summonses to witnesses and take evidence on oath⁴. They also make provision as to the costs of the inquiry⁵ and impose criminal sanctions for refusing to obey a witness summons and for altering or suppressing books and documents⁶.

1 As to the Secretary of State see PARA 603 ante.

2 See PARAS 636, 641, 651, 671 ante.

3 See the Harbours Act 1964 s 47(1) (amended by the Transport Act 1981 ss 18(1), 40(1), Sch 6 para 11, Sch 12 Pt II); Harbours Act 1964 s 47(1A) (added by the Transport and Works Act 1992 s 63(1), Sch 3 para 5(1), (2)). The provisions for local government inquiries referred to in the Harbours Act 1964 s 47(1) (as amended) are those of the Local Government Act 1972 s 250(2)-(5) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 105); Harbours Act 1964 s 47(1) (as so amended); Interpretation Act 1978 s 17(2)(a).

4 See the Local Government Act 1972 s 250(2) (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 105.

5 See ibid s 250(4), (5) (s 250(4) as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 105. The provisions as to costs apply to hearings as well as to inquiries: see the Harbours Act 1964 s 47(1) (as amended: see note 3 supra). As to such hearings see PARAS 636, 651 ante.

6 See the Local Government Act 1972 s 250(3) (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 105.

UPDATE

760 Inquiries

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(9) ENFORCEMENT AND ADMINISTRATION OF HARBOUR LAW/761. Service of documents under the Harbours Act 1964.

761. Service of documents under the Harbours Act 1964.

Any document required or authorised by the Harbours Act 1964 to be given to or served on any person¹ may be given or served either by delivering it to that person or by leaving it at his proper address² or by post by the recorded delivery service³. Any such document required or authorised to be given to or served on an authority or body which is a corporation is duly given or served if it is given to or served on its secretary or clerk⁴.

If after reasonable inquiry the authority, body or person seeking to give or serve any such document cannot ascertain the name or the address of any owner⁵, lessee or occupier of land⁶ to or on whom such document is to be given or served, it may be given or served by addressing it to the person by the description of 'owner', 'lessee' or 'occupier' of the land (describing it) to which the document relates, and by delivering it to some responsible person resident or appearing to be resident on the premises, or, if there is no such person to whom it can be delivered, by fixing it or a copy of it to some conspicuous part of the premises⁷.

1 For the meaning of 'person' see PARA 605 note 4 ante.

2 The proper address of any person to or on whom any such document is to be given or served is, in the case of the secretary or clerk of a corporation, that of its registered or principal office, and in any other case, it is the last-known address of the person to be served, subject to the qualification that, where the person to or on whom the document is to be given or served, has, in accordance with arrangements agreed, furnished an address in the United Kingdom for the giving or service of the document, his proper address for such purposes is the address so furnished: Harbours Act 1964 s 48(3). For the meaning of 'United Kingdom' see PARA 613 note 1 ante. As to the registered office of a company see COMPANIES vol 14 (2009) PARA 129.

3 Ibid s 48(1). Where an Act authorises or requires any document to be served by post (whether the expression 'serve' or the expression 'give' or 'send' or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post: Interpretation Act 1978 s 7. A requirement to send a document by recorded delivery is not confined to sending it by the Post Office postal system: see the Postal Services Act 2000 s 127(4), Sch 8 Pt 1; and POST OFFICE.

4 Harbours Act 1964 s 48(2). As to service on a company see also the Companies Act 1985 s 725(1); and COMPANIES vol 14 (2009) PARA 671.

5 For the meaning of 'owner' see PARA 634 note 7 ante.

6 For the meaning of 'land' see PARA 605 note 8 ante.

7 Harbours Act 1964 s 48(4). Where a document is required under the Harbours Act 1964 to be served on an owner of land, and the land is ecclesiastical property, a copy of the document must be served on the Church Commissioners: s 49(1). For the meaning of 'ecclesiastical property' see PARA 629 note 18 ante. As to the Church Commissioners see ECCLESIASTICAL LAW. As from a day to be appointed the document must be served, instead of on the Church Commissioners, on the Diocesan Board of Finance for the diocese in which the land is situated: s 49(1) (prospectively amended by the Church of England (Miscellaneous Provisions) Measure 2006 s 14, Sch 5 para 10(a)). At the date at which this volume states the law no such day had been appointed.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/9. MANAGEMENT AND REGULATION/(9) ENFORCEMENT AND ADMINISTRATION OF HARBOUR LAW/762. Special Acts to be available for inspection.

762. Special Acts to be available for inspection.

After six months¹ have expired from the passing of the special Act², the harbour authority³ must at all times keep a Queen's Printer's copy of that Act in its principal office of business⁴. Within six months after its passing, the authority must deposit a copy of the Act in the office of the proper officer of the county council of the county in which the harbour, dock or pier⁵ is situated⁶. The proper officer and the harbour authority must keep their copies of the special Act and allow all persons interested to inspect them and make extracts or copies from them⁷. If the harbour authority fails to keep a copy of the special Act, or to deposit a copy of it with the proper officer, it is guilty of an offence⁸.

1 'Month' means calendar month: Harbours, Docks and Piers Clauses Act 1847 s 3.

2 For the meaning of 'the special Act' see PARA 602 note 2 ante.

3 The Harbours, Docks and Piers Clauses Act 1847 s 97 refers to 'the undertakers', for the meaning of which see PARA 602 note 2 ante. In practice, the undertakers will always be a harbour authority within the meaning of the Harbours Act 1964: see PARA 619 ante.

4 Harbours, Docks and Piers Clauses Act 1847 s 97. The provisions of the Harbours, Docks and Piers Clauses Act 1847 only apply where they are incorporated in local legislation: see PARA 602 ante.

5 For the meaning of 'harbour, dock or pier' see PARA 663 note 3 ante.

6 Harbours, Docks and Piers Clauses Act 1847 s 97.

7 See *ibid* s 97. Section 97 as enacted referred to such custody and inspection being in accordance with the Parliamentary Documents Deposit Act 1837, but this Act has been repealed: see now the Local Government Act 1972 s 225; and LOCAL GOVERNMENT vol 69 (2009) PARA 538.

8 Harbours, Docks and Piers Clauses Act 1847 s 98. The penalty is a fine of level 2 on the standard scale, and £5 for every day afterwards during which a copy of the special Act is not kept or deposited as required by s 97 (see the text and notes 1-7 *supra*): s 98 (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 605 note 13 ante.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/10. PRIVATISATION OF CERTAIN PORT UNDERTAKINGS/(1) TRANSFER OF PORT UNDERTAKINGS/763. Formation of companies for purposes of transfer of certain statutory port undertakings.

10. PRIVATISATION OF CERTAIN PORT UNDERTAKINGS

(1) TRANSFER OF PORT UNDERTAKINGS

763. Formation of companies for purposes of transfer of certain statutory port undertakings.

A relevant port authority¹ has power to form a company² whose objects include the acquisition of property, rights and liabilities³ and the assumption of functions⁴ of the authority by virtue of a transfer under the provisions⁵ of the Ports Act 1991⁶.

1 'Relevant port authority' means any harbour authority other than: (1) any company having a share capital; (2) a local authority (within the meaning of the Local Government Act 1972 s 270(1) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 23)); (3) the British Waterways Board (see WATER AND WATERWAYS vol 101 (2009) PARA 725 et seq); (4) Associated British Ports (see PARA 622 ante); and (5) the Port of London Authority (see PARAS 623-627 ante): Ports Act 1991 ss 1(3), (4), (5), 40(1). For the meaning of 'harbour authority' see PARA 619 ante.

2 Any company formed for these purposes must be a company limited by shares and registered under the Companies Act 1985: Ports Act 1991 s 1(2). 'Shares' includes stock: s 40(1).

3 'Liability' includes an obligation: *ibid* s 40(1).

4 'Functions' includes powers and duties: *ibid* s 40(1).

5 le the provisions of *ibid* s 2: see PARA 764 post.

6 *Ibid* s 1(1).

UPDATE

763 Formation of companies for purposes of transfer of certain statutory port undertakings

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 2--Reference to Companies Act 1985 now to Companies Act 2006: Ports Act 1991 s 1(2) (amended by SI 2009/1941).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/10. PRIVATISATION OF CERTAIN PORT UNDERTAKINGS/(1) TRANSFER OF PORT UNDERTAKINGS/764. Transfer of undertakings.

764. Transfer of undertakings.

Where a scheme is made¹ in relation to a relevant port authority which:

- 199 (1) specifies a company² which is a wholly-owned subsidiary³ of the authority⁴ to be⁵ the authority's successor company⁶; and
- 200 (2) makes the necessary supplementary provision for the purposes⁷ of the transfer⁸,

then⁹, on the date on which the scheme takes effect¹⁰:

- 201 (a) all property, rights and liabilities of the authority¹¹; and
- 202 (b) all functions conferred or imposed on the authority by any local statutory provision¹²,

are transferred to and become¹³ property, rights and liabilities or (as the case may be) functions of the successor company¹⁴.

Supplementary provision is made with respect to the transfer of undertakings¹⁵.

1 le where a scheme is made under the Ports Act 1991 Pt I (ss 1-20) (as amended). In Pt I (as amended), in relation to any transfer under s 2 of property, rights, liabilities and functions of a relevant port authority, references to 'the scheme' are references to the scheme made for the purposes of the transfer: ss 2(4)(a), 20(4). For the meaning of 'relevant port authority' see PARA 763 note 1 ante; for the meaning of 'liability' see PARA 763 note 3 ante; and for the meaning of 'functions' see PARA 763 note 4 ante.

2 le a company formed in pursuance of *ibid* s 1: see PARA 763 ante.

3 'Wholly-owned subsidiary' and 'subsidiary' have the meanings given by the Companies Act 1985 s 736 (as substituted) (see COMPANIES vol 14 (2009) PARA 25): Ports Act 1991 s 40(1).

4 In *ibid* Pt I (as amended), in relation to any transfer under s 2 of property, rights, liabilities and functions of a relevant port authority, references to 'the authority' are references to the body whose property, rights, liabilities and functions are the subject of the transfer: ss 2(4)(b), 20(4).

5 le for the purposes of *ibid* Pt I (as amended).

6 *Ibid* s 2(1)(a). The reference to being the authority's successor company is to being the authority's successor company for the purposes of Pt I (as amended). In Pt I (as amended), in relation to any transfer under s 2 of property, rights, liabilities and functions of a relevant port authority, references to 'the successor company' are references to the company specified in the scheme as that authority's successor company: ss 2(4)(c), 20(4).

7 le for the purposes of the transfer provided by *ibid* s 2(1).

8 *Ibid* s 2(1)(b). In relation to any such transfer, the reference in s 2(1)(b) to the necessary supplementary provision for the purposes of the transfer is a reference to provision of any one or more of the descriptions mentioned in Sch 1 Pt II paras 7-14 (supplementary provisions which may be included in schemes) (see PARA 767 post): s 2(6).

9 le subject to *ibid* s 2(3): see note 14 *infra*.

10 As to the date on which the scheme takes effect see *ibid* s 9(7) (see PARA 774 post) or s 12(8) (see PARA 777 post).

11 *Ibid* s 2(2)(a).

12 *Ibid* s 2(2)(b). 'Local statutory provision' means: (1) a provision contained in, or in a document made or issued under, any local Act (including an Act confirming a provisional order); or (2) a provision of any other instrument which is in the nature of a local enactment: s 40(1).

13 le by virtue of *ibid* s 2.

14 *Ibid* s 2(2). The transfer under head (a) in the text does not apply to: (1) the securities of the successor company held by the authority (s 2(3)(a)); (2) any rights or liabilities of the authority in respect of such securities held by a nominee of the authority (s 2(3)(b)); or (3) any liability of the authority incurred by virtue of s 19 (see PARA 787 post) in connection with any proposal for maximising participation by employees of the successor company in ownership of its equity share capital (s 2(3)(c)). For these purposes, 'securities', in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company: s 40(1). For the meaning of 'shares' see PARA 763 note 2 ante. 'Equity share capital' has the meaning given by the Companies Act 1985 s 744 (see COMPANIES vol 15 (2009) PARA 1047): Ports Act 1991 s 40(1). References, in relation to any company, to maximising participation by employees of the company in ownership of its equity share capital are references to securing the disposal of the whole or a substantial part of its equity share capital ('the relevant equity') to: (a) managers or other persons employed by the company; or (b) another company ('the acquiring company') the whole or a substantial part of whose equity share capital is owned by managers or other persons so employed, where the persons so employed participating in acquiring the relevant equity or (as the case may be) in ownership of the acquiring company's equity share capital comprise the greatest possible number of persons so employed: s 40(2)(a). For the purposes of s 2(3)(c) and s 40(2)(a), a person employed by a company which is a wholly-owned subsidiary of any company or other body mentioned in that provision is to be regarded as employed by the company or other body: s 40(3), (4). 'Body' means a body corporate: s 40(1).

15 See *ibid* s 2(5), Sch 1 Pt I paras 1-6 (as amended) (supplementary provisions of general application); and PARAS 765-766 post.

UPDATE

764 Transfer of undertakings

NOTE 3--In definitions of 'subsidiary' and 'wholly-owned subsidiary' reference to Companies Act 1985 s 736 now to Companies Act 2006 s 1159: Ports Act 1991 s 40(1) (definitions amended by SI 2009/1941).

NOTE 14--In definition of 'equity share capital' reference to Companies Act 1985 s 744 now to Companies Act 2006 s 548: Ports Act 1991 s 40(1) (definition amended by SI 2009/1941).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/10. PRIVATISATION OF CERTAIN PORT UNDERTAKINGS/(1) TRANSFER OF PORT UNDERTAKINGS/765. Construction of agreements, statutory provisions and documents.

765. Construction of agreements, statutory provisions and documents.

Where any transferred rights or liabilities¹ are rights or liabilities under an agreement to which the transferor was a party immediately before the transfer date², that agreement is to have effect on and after that date as if:

- 203 (1) the transferee had been a party to the agreement³; and
- 204 (2) for any reference (whether express or implied and, if express, however worded) to the transferor there were substituted, as respects anything falling to be done on or after that date, a reference to the transferee⁴; and
- 205 (3) any reference (whether express or implied and, if express, however worded) to a person employed by, or engaged in the business of, the transferor and holding a specified office or serving in a specified capacity were, as respects anything falling to be done on or after that date, a reference: (a) to such person as the transferee may appoint⁵; or (b) in default of appointment, to a person employed by, or engaged in the business of, the transferee who corresponds as nearly as may be to the person referred to in the agreement⁶.

The above provisions (except head (1) above) apply in relation to: (i) any statutory provision⁷; (ii) any provision of any agreement to which the transferor was not a party⁸; and (iii) any provision of any document other than an agreement⁹, as they apply in relation to an agreement to which the transferor was a party¹⁰.

The transferee and any other person have, as from the transfer date, the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing any transferred right or liability as they would have had if that right or liability had at all times been a right or liability of the transferee¹¹.

The above provisions¹² have effect for the interpretation of agreements, statutory provisions and other instruments subject to the context, and do not apply where the context otherwise requires¹³.

1 For the meaning of 'liability' see PARA 763 note 3 ante.

2 'The transfer date' means the date on which the transfer takes effect; 'the transfer' means the transfer in question under the Ports Act 1991 s 2 (see PARA 764 ante); and references to the transferor and the transferee and to transferred property, rights, liabilities or functions are to be read accordingly: s 2(5), Sch 1 para 6. For the meaning of 'functions' see PARA 763 note 4 ante.

3 Ibid Sch 1 para 1(1)(a). Schedule 1 para 1 applies to any agreement whether in writing or not and whether or not of such nature that rights and liabilities under it could be assigned by the transferor: Sch 1 para 1(2). For the meaning of 'writing' see PARA 605 note 3 ante.

4 Ibid Sch 1 para 1(1)(b). See also notes 3 supra, 10 infra.

5 Ibid Sch 1 para 1(1)(c)(i). See also notes 3 supra, 10 infra.

6 Ibid Sch 1 para 1(1)(c)(ii). See also notes 3 supra, 10 infra.

7 Ibid Sch 1 para 2(1)(a). 'Statutory provision' means a provision (whether of a general or special nature) contained in, or in a document made or issued under, any Act (whether of a general or of a special nature): s 40(1). For the meaning of 'Act' see PARA 628 note 26 ante.

8 Ibid Sch 1 para 2(1)(b).

9 Ibid Sch 1 para 2(1)(c).

10 Ibid Sch 1 para 2(1). Schedule 1 para 2(1) has effect in relation to any such provision only if and so far as the provision relates to: (1) any of the transferred property, rights, liabilities or functions (Sch 1 para 2(2)(a)); or (2) any business or activity to which any of the transferred property, rights, liabilities or functions relates (Sch 1 para 2(2)(b)). In relation to any such provision, references in heads (2) and (3) in the text to the transferor and to any persons employed by, or engaged in the business of, the transferor include references made by means of a general reference to a class of persons of which the transferor is one, without the transferor being specifically referred to: Sch 1 para 2(3).

11 Ibid Sch 1 para 3(1). Any legal proceedings or applications to any authority pending on the transfer date by or against the transferor, in so far as they relate to: (1) any transferred property, right, liability or function (Sch 1 para 3(2)(a)); or (2) any agreement or enactment relating to any such property, right, liability or function (Sch 1 para 3(2)(b)), are to be continued by or against the transferee to the exclusion of the transferor: Sch 1 para 3(2). For the meaning of 'enactment' see PARA 628 note 26 ante. Schedule 1 para 3 is without prejudice to the generality of Sch 1 paras 1, 2 (see the text to notes 1-10 supra): Sch 1 para 3(3).

12 Ie ibid Sch 1 paras 1-3: see the text to notes 1-11 supra.

13 Ibid Sch 1 para 4.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/10. PRIVATISATION OF CERTAIN PORT UNDERTAKINGS/(1) TRANSFER OF PORT UNDERTAKINGS/766. Transfer of rights and liabilities relating to employment.

766. Transfer of rights and liabilities relating to employment.

For the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006¹, the statutory provision for the transfer of port undertakings² is to be regarded as effecting a transfer to which those regulations apply of the whole of the transferor's undertaking, including any part of it which is not in the nature of a commercial venture; and accordingly in those regulations, as they apply in relation to such a transfer, references to the undertaking apply to all activities (of whatever description) carried on before the transfer by the transferor³.

1 See the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246; and EMPLOYMENT vol 39 (2009) PARA 111 et seq.

2 Ie the Ports Act 1991 s 2: see PARA 764 ante.

3 Ibid s 2(5), Sch 1 para 5 (amended by the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246, reg 20(3), Sch 2 para 1(c)). For the meanings of 'the transfer' and 'the transferor' see PARA 765 note 2 ante.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/10. PRIVATISATION OF CERTAIN PORT UNDERTAKINGS/(1) TRANSFER OF PORT UNDERTAKINGS/767. Supplementary provisions which may be included in schemes.

767. Supplementary provisions which may be included in schemes.

Various supplementary provisions may be included in schemes for the purpose of the transfer¹ of port undertakings². These include provision altering the constitution of the authority³, and provision imposing obligations on the authority with respect to such matters as the keeping of accounts and records, the preparation of a statement of accounts relating to the state of affairs and the income and expenditure of the authority, and the audit of the authority's accounts⁴. Provision may also be made in relation to the successor company's statutory accounts⁵. There may also be included such supplementary, incidental or consequential provision as appears to the authority (or, where the scheme is made by the Secretary of State, to the Secretary of State) to be necessary or expedient for the purposes or in consequence of, or in connection with, the operation of any of the provisions for the transfer of the undertakings of relevant port authorities⁶ or of the scheme⁷.

1 Ie a transfer under the Ports Act 1991 s 2: see PARA 764 ante.

2 See *ibid* s 2(1)(b), 2(6), Sch 1 Pt II paras 7-14; and the text and notes 3-7 *infra*. As to the supplementary provisions of general application see Sch 1 Pt I paras 1-6 (as amended); and PARA 765 ante.

3 *Ibid* Sch 1 para 7. For the meaning of 'the authority' see PARA 764 note 4 ante.

4 See *ibid* Sch 1 para 8. Provision may be made requiring copies of audited accounts and the report of the auditor on such accounts to be sent to the appropriate minister: Sch 1 para 8. Provision under Sch 1 para 8 may include in particular a requirement that any such statement of accounts should comply with requirements imposed by the appropriate minister in such manner, and with respect to such matters, as may be specified in the scheme: Sch 1 para 8. 'The appropriate minister' means, in relation to any body which is or immediately before a transfer under s 2 (see PARA 764 ante) was a relevant port authority, the minister concerned with the relevant harbour or harbours or, where there is more than one minister so concerned, both or all of those ministers acting jointly: s 20(1). For the meaning of 'relevant port authority' see PARA 763 note 1 ante. For the purposes of the definition of 'the appropriate minister', the minister concerned with a harbour is the Secretary of State; and a harbour is a relevant harbour in relation to any such body as is there mentioned if it is one for which that body is or immediately before a transfer under s 2 was the harbour authority: s 20(2) (amended by the Transfer of Functions (Fishery Harbours) Order 2001, SI 2001/3503, art 5, Schedule para 3(a)). For the meaning of 'harbour' see PARA 611 ante; and for the meaning of 'harbour authority' see PARA 619 ante. As to the Secretary of State see PARA 603 ante. Any expenses incurred by a Minister of the Crown in consequence of the provisions of the Ports Act 1991 are to be paid out of money provided by Parliament: s 39. As to the provision of money by Parliament see PARLIAMENT vol 78 (2010) PARA 804.

5 See *ibid* Sch 1 para 9 (statutory accounts of successor companies), Sch 1 para 10 (preparation of statement of accounts by successor companies), Sch 1 para 11 (application of the Companies Act 1985 ss 270-276 (as amended) in relation to any initial distribution of the successor company). References in the Ports Act 1991 Sch 1 Pt II paras 7-14 to the statutory accounts of the successor company are references to: (1) any accounts prepared by that company for the purposes of any provision of the Companies Act 1985, including group accounts but excluding any accounts so prepared by virtue of any provision of the scheme made under the Ports Act 1991 Sch 1 para 11; and (2) any statement of accounts prepared by that company under the Harbours Act 1964 s 42 (as substituted and amended) (see PARA 684 ante): Ports Act 1991 Sch 1 para 13. For the meaning of 'the successor company' see PARA 764 note 6 ante.

6 Ie *ibid* Pt I (ss 1-20) (as amended): see PARA 763 et seq ante.

7 *Ibid* Sch 1 para 12. For the meaning of 'the scheme' see PARA 764 note 1 ante. Provision under Sch 1 para 12 may include in particular provision for repealing or amending any local statutory provision affecting the authority or any harbour for which that authority is the harbour authority; and any such provision may be made so as to take effect on the date on which the scheme takes effect or on the date on which the authority is dissolved under s 7 (see PARA 772 post): Sch 1 para 12. For the meaning of 'local statutory provision' see PARA 764 note 12 ante. As to the date on which the scheme takes effect see s 9(7) (see PARA 774 post) or s 12(8) (see PARA 777 post).

UPDATE

767 Supplementary provisions which may be included in schemes

NOTE 5--1991 Act Sch 1 para 11 further amended, Sch 1 para 13 amended to take account of the coming into force of the Companies Act 2006: SI 2008/948.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/10. PRIVATISATION OF CERTAIN PORT UNDERTAKINGS/ (2) DISPOSAL OF OWNERSHIP OF THE SUCCESSOR COMPANY/768. Initial issue of securities of the successor company.

(2) DISPOSAL OF OWNERSHIP OF THE SUCCESSOR COMPANY

768. Initial issue of securities of the successor company.

Following the transfer¹ to the successor company² of property, rights, liabilities³ and functions⁴ of the authority⁵, the successor company must issue such securities⁶ of the company as the authority may from time to time direct⁷ to the authority⁸, or to any person entitled to require the issue of the securities following their initial allotment to the authority⁹.

Securities required to be issued for these purposes must be issued or allotted at such time or times and on such terms (as to allotment) as the authority may direct¹⁰. Shares¹¹ issued for these purposes must be of such nominal value as the authority may direct¹², and must be issued as fully paid and treated for the purposes of the Companies Act 1985¹³ as if they had been paid up by virtue of the payment to the successor company of their nominal value in cash¹⁴.

1 le the transfer under the Ports Act 1991 s 2: see PARA 764 ante.

2 For the meaning of 'the successor company' see PARA 764 note 6 ante.

3 For the meaning of 'liability' see PARA 763 note 3 ante.

4 For the meaning of 'functions' see PARA 763 note 4 ante.

5 For the meaning of 'the authority' see PARA 764 note 4 ante.

6 For the meaning of 'securities' see PARA 764 note 14 ante.

7 The authority must not give a direction under the Ports Act 1991 s 3(1) at a time when the successor company has ceased to be a wholly-owned subsidiary of the authority: s 3(2). For the meaning of 'wholly-owned subsidiary' see PARA 764 note 3 ante. As to directions generally see PARA 770 note 8 post.

8 Ibid s 3(1)(a).

9 Ibid s 3(1)(b). As to the exercise by the authority of its powers under s 3 see PARAS 769-771 post. For the meaning of 'person' see PARA 605 note 4 ante.

10 Ibid s 3(3).

11 For the meaning of 'shares' see PARA 763 note 2 ante.

12 Ports Act 1991 s 3(4)(a).

13 See generally COMPANIES.

14 Ports Act 1991 s 3(4)(b).

UPDATE

768 Initial issue of securities of the successor company

TEXT AND NOTES 11-14--Reference to Companies Act 1985 now to Companies Act 2006: Ports Act 1991 s 3(4)(b) (amended by SI 2009/1941).

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769. Disposal by the authority of its holding in the successor company.

The authority¹ must exercise its powers in relation to the issue of securities of the successor company² in such manner as appears to it to be calculated to facilitate the disposal³ of the whole of its holding in the successor company⁴. For these purposes, that holding is to be regarded as consisting of:

- 206 (1) the shares⁵ subscribed for by the authority or by any nominee of the authority on the formation of the successor company⁶; and
- 207 (2) all securities of the successor company issued or rights to require the issue of such securities initially allotted⁷ to the authority⁸.

The authority must provide for the disposal of all securities or rights comprised in that holding in such manner, at such time or times and on such terms as it thinks fit⁹.

1 For the meaning of 'the authority' see PARA 764 note 4 ante.

2 Ie its powers under the Ports Act 1991 s 3: see PARA 768 ante. For the meaning of 'securities' see PARA 764 note 14 ante; and for the meaning of 'the successor company' see PARA 764 note 6 ante.

3 Ie in accordance with ibid s 4: see the text and notes 4-9 infra.

4 Ibid s 4(1).

5 For the meaning of 'shares' see PARA 763 note 2 ante.

6 Ports Act 1991 s 4(2)(a).

7 Ie allotted to the authority in pursuance of ibid s 3: see PARA 768 ante.

8 Ibid s 4(2)(b).

9 Ibid s 4(3). The exercise of this power requires the consent of the Secretary of State: see PARA 770 post. Where any such securities or rights are disposed of in pursuance of any provision made under s 4(3), a sum equal to 32.5% of the consideration given for the securities or rights is payable by the authority to the successor company within the period of 60 days beginning with the day on which the disposal is made: s 4(4). For the purposes of Pt I (ss 1-20) (as amended), the time when a disposal of securities or of rights to require the issue of securities of a company is made must be determined as it would fall to be determined in accordance with the Taxation of Chargeable Gains Act 1992 s 28 (see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARAS 22-23) for the purposes of tax on chargeable gains: Ports Act 1991 s 20(5) (amended by the Taxation of Chargeable Gains Act 1992 s 290(1), Sch 10 para 24(4)). As to the treatment of sums paid by the authority to the successor company under the Ports Act 1991 s 4(4) see s 8; and PARA 773 post.

SUCCESSOR COMPANY/770. Ministerial control over issue and disposal by the authority of successor company securities.

770. Ministerial control over issue and disposal by the authority of successor company securities.

The authority¹ must not, without the consent of the appropriate minister², exercise any power³ as to the initial issue of securities⁴ of the successor company⁵ or make any provision for the disposal⁶ of any securities or rights⁷. The appropriate minister may from time to time give to the authority directions⁸ requiring it to exercise any such power in a specified manner⁹ or to make in pursuance of that duty provision of any specified description¹⁰. In exercising his powers¹¹ to give such directions, the appropriate minister must have particular regard to the desirability of encouraging the disposal of the whole or a substantial part of the equity share capital¹² of the successor company to: (1) managers or other persons employed by the company¹³; or (2) another company, the whole or a substantial part of whose equity share capital is owned by managers or other persons so employed¹⁴.

1 For the meaning of 'the authority' see PARA 764 note 4 ante.

2 As to the appropriate minister and as to the payment of his expenses see PARA 767 note 4 ante.

3 Ie any power conferred on the authority by the Ports Act 1991 s 3: see PARA 768 ante.

4 For the meaning of 'securities' see PARA 764 note 14 ante.

5 Ports Act 1991 s 5(1)(a). For the meaning of 'the successor company' see PARA 764 note 6 ante.

6 Ie any disposal in pursuance of its duty under ibid s 4(3): see PARA 769 ante.

7 Ibid s 5(1)(b).

8 It is the duty of any person to whom any directions are given in pursuance of any provision of the Ports Act 1991 to give effect to those directions: s 38(1). Any directions so given by a Minister of the Crown must be in writing: s 38(2). For the meaning of 'person' see PARA 605 note 4 ante; and for the meaning of 'writing' see PARA 605 note 3 ante.

9 Ibid s 5(2)(a). For these purposes, 'specified' means specified in directions given by the appropriate minister under s 5: s 5(4).

10 Ibid s 5(2)(b).

11 Ie under ibid s 5(2): see the text to notes 8-10 supra.

12 For the meaning of 'equity share capital' see PARA 764 note 14 ante.

13 Ports Act 1991 s 5(3)(a). For the purposes of s 5(3), a person employed by a company which is a wholly-owned subsidiary of any company or other body mentioned in that provision is to be regarded as employed by the company or other body so mentioned: s 40(3), (4). For the meaning of 'wholly-owned subsidiary' see PARA 764 note 3 ante; and for the meaning of 'body' see PARA 764 note 14 ante.

14 Ibid s 5(3)(b). See also note 13 supra.

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771. Supplementary provisions as to authority's functions.

The authority¹ has power to do anything it considers necessary or desirable for the purpose of carrying out any of its functions² in relation to the disposal of the ownership of the successor company³. The successor company must:

- 208 (1) so far as it is reasonably able to do so, make available for the use of the authority such premises and other facilities as the authority may require for the purpose of carrying out its functions under the provisions⁴ for the transfer of the undertakings of relevant port authorities⁵;
- 209 (2) if so directed⁶ by the authority, meet any expenses incurred by the authority in carrying out its functions under those provisions, or such part of any such expenses as the authority may direct, on behalf of the authority⁷.

1 For the meaning of 'the authority' see PARA 764 note 4 ante.

2 Its functions under the Ports Act 1991 s 3 (see PARA 768 ante) and s 4 (see PARA 769 ante): s 6(1). For the meaning of 'functions' see PARA 763 note 4 ante.

3 Ibid s 6(1). For the meaning of 'the successor company' see PARA 764 note 6 ante.

4 Its provisions of ibid Pt I (ss 1-20) (as amended).

5 Ibid s 6(2)(a). For the meaning of 'relevant port authority' see PARA 763 note 1 ante.

6 As to directions generally see PARA 770 note 8 ante.

7 Ports Act 1991 s 6(2)(b).

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772. Dissolution of the authority.

The appropriate minister¹ may, after consulting the authority², by order³ dissolve it on a day specified in the order once he is satisfied that:

- 210 (1) the disposal functions⁴ of the authority have been completely carried out⁵;
- 211 (2) nothing further remains to be done by the authority under any provision made by the scheme⁶; and
- 212 (3) the authority has met all expenses and liabilities⁷ incurred by it in carrying out its functions under the provisions for the transfer of the undertakings of relevant port authorities⁸ (including in particular liabilities in respect of levy⁹ or corporation tax on chargeable gains¹⁰) other than:

11

- 16. (a) any expenses met¹¹ by the successor company¹²; or

- 17. (b) any liabilities which he considers should be transferred¹³ to the successor company¹⁴.

12

On that day any property, rights and liabilities to which the authority is entitled or subject immediately before that day (whether or not capable of being transferred or assigned by the authority) are transferred to and become¹⁵ property, rights and liabilities of the successor company¹⁶.

- 1 As to the appropriate minister and as to the payment of his expenses see PARA 767 note 4 ante.
- 2 For the meaning of 'the authority' see PARA 764 note 4 ante.
- 3 Any power to make an order or regulations under the Ports Act 1991 is exercisable by statutory instrument: s 37(1). Orders made under s 7, being local in nature, are not recorded in this work.
- 4 Ie the functions under ibid s 3 (see PARA 768 ante) and s 4(3) (see PARA 769 ante). For the meaning of 'functions' see PARA 763 note 4 ante.
- 5 Ibid s 7(1)(a).
- 6 Ibid s 7(1)(b). For the meaning of 'the scheme' see PARA 764 note 1 ante.
- 7 For the meaning of 'liability' see PARA 763 note 3 ante.
- 8 Ie under the Ports Act 1991 Pt I (ss 1-20) (as amended): see PARA 763 et seq ante.
- 9 Ie under ibid s 13(1): see PARA 778 post.
- 10 As to the liability of the authority to corporation tax on chargeable gains see ibid s 35(2), (3) (as amended); and PARA 788 post.
- 11 Ie any expenses met in accordance with ibid s 6(2)(b): see PARA 771 ante.
- 12 Ibid s 7(1)(c)(i). For the meaning of 'the successor company' see PARA 764 note 6 ante.
- 13 Ie transferred under ibid s 7(2): see the text to notes 15-16 infra.
- 14 Ibid s 7(1)(c)(ii).
- 15 Ie by virtue of ibid s 7.
- 16 Ibid s 7(2). As to the treatment of the net value of assets and liabilities transferred to the successor company under s 7 see s 8; and PARA 773 post.

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773. Treatment of net proceeds of disposal of ownership.

An amount equal to the aggregate amount of the sums paid by the authority¹ to the successor company² is to be treated as accumulated realised profits of the successor company³. The amount which falls⁴ to be treated as accumulated realised profits of the successor company must, as the case may require, be: (1) increased by any amount by which the asset value on the transfer to the successor company⁵ exceeds the liability amount⁶; or (2) reduced by any amount by which the liability amount on that transfer exceeds the asset value⁷.

- 1 For the meaning of 'the authority' see PARA 764 note 4 ante.
- 2 Ie paid under the Ports Act 1991 s 4(4): see PARA 769 ante. For the meaning of 'the successor company' see PARA 764 note 6 ante.
- 3 Ibid s 8(1). For the meaning of 'the successor company' see PARA 764 note 6 ante. As to accumulated realised profits see the Companies Act 1985 s 263 (now repealed).
- 4 Ie under the Ports Act 1991 s 8(1): see the text to notes 1-3 supra.
- 5 Ie under ibid s 7: see PARA 772 ante.

6 Ibid s 8(2)(a). 'The liability amount' means the aggregate amount of the liabilities transferred: s 8(3). For the meaning of 'liability' see PARA 763 note 3 ante. See also note 7 infra.

7 Ibid s 8(2)(b). 'The asset value' means the aggregate value of the assets transferred: s 8(3). For the purposes of s 8, the value of any asset and the amount of any liability transferred to the successor company under s 7 (see PARA 772 ante) is to be taken to be its value or amount determined in accordance with any provision made by the scheme under Sch 1 para 9 (transitional provision as to accounts etc of the successor company) (see PARA 767 ante): s 8(4). For the meaning of 'the scheme' see PARA 764 note 1 ante.

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PRIVATISATION OF CERTAIN PORT UNDERTAKINGS/(3) PROCEDURE FOR SCHEMES/774.
Schemes made by relevant port authorities.

(3) PROCEDURE FOR SCHEMES

774. Schemes made by relevant port authorities.

Any relevant port authority¹ may, with a view to securing the transfer² of the property, rights, liabilities³ and functions⁴ of the authority⁵ to a company⁶, submit to the appropriate minister⁷ a scheme⁸ prepared by the authority for the purposes of the proposed transfer⁹. Together with any such scheme the authority submitting it must submit to the appropriate minister a copy of the memorandum and articles of the company¹⁰. Where an authority has submitted such a scheme to the appropriate minister, the authority must:

- 213 (1) publish by Gazette and local advertisement¹¹ the required notice relating to the scheme¹²; and
- 214 (2) take such steps as are reasonably practicable to serve a copy of that notice on: (a) every employee of the authority¹³; and (b) every person who has power to appoint or nominate for appointment one or more members of the authority or who is required to be consulted in relation to any such appointment¹⁴.

Where the above requirements¹⁵ have been met in relation to a scheme submitted to the appropriate minister¹⁶, and the period allowed for making representations to him with respect to the proposed transfer or any provisions of the scheme or of the associated company documents has expired¹⁷, the minister must decide whether or not to confirm the scheme after considering any such representations duly made to him before the end of that period and not withdrawn¹⁸. If he decides to confirm the scheme:

- 215 (i) he may do so either without modifications or with such modifications as he thinks fit after consulting the authority who submitted the scheme¹⁹; and
- 216 (ii) he may first (if he thinks fit) give the authority a direction²⁰ requiring it, before such date as may be specified in the direction, to secure that such alterations are made to the memorandum and articles of the company²¹ as may be specified in the direction²².

Confirmation of a scheme must be given by an order made by the minister; and a scheme so confirmed takes effect on the date on which the order confirming it comes into force or on such date as may be specified in that order²³.

1 For the meaning of 'relevant port authority' see PARA 763 note 1 ante.

2 I.e. the transfer under the Ports Act 1991 s 2: see PARA 764 ante.

3 For the meaning of 'liability' see PARA 763 note 3 ante.

4 For the meaning of 'functions' see PARA 763 note 4 ante.

5 For the meaning of 'the authority' see PARA 764 note 4 ante.

6 Is a company formed in pursuance of the Ports Act 1991 s 1: see PARA 763 ante.

7 As to the appropriate minister and as to the payment of his expenses see PARA 767 note 4 ante.

8 For the meaning of 'the scheme' see PARA 764 note 1 ante.

9 Ports Act 1991 s 9(1).

10 Ibid s 9(2). Such documents are referred to as 'the associated company documents': s 9(2). As to memoranda and articles of association generally see COMPANIES vol 14 (2009) PARAS 104, 228 et seq.

11 References, in relation to a notice under ibid s 9(3) or s 12(3) (see PARA 777 post) affecting a harbour, to publication of the notice by Gazette and local advertisement are references to publication: (1) in the Gazette; and (2) in each of two successive weeks, in one or more local newspapers circulating in the locality where the harbour is situated: s 20(3)(a). For the purposes of s 20 (as amended), a notice under s 9(3) or s 12(3) relating to a scheme for the purposes of a proposed transfer under s 2 (see PARA 764 ante) of property, rights, liabilities and functions of a relevant port authority is to be regarded as affecting any harbour for which that authority is the harbour authority: s 20(6). 'The Gazette' means, in relation to the publication of a notice under s 9(3)(a) or s 12(3) affecting a harbour in England or Wales, the London Gazette: s 20(1). For the meaning of 'harbour' see PARA 611 ante; and for the meaning of 'harbour authority' see PARA 619 ante.

12 Ibid s 9(3)(a). The required notice relating to such a scheme is a notice: (1) stating that the authority has submitted to the minister a scheme prepared by the authority for the purposes of a proposed transfer under s 2 (see PARA 764 ante) to a company formed by the authority of the authority's property, rights, liabilities and functions (s 9(4)(a)); (2) naming a place where copies of the scheme and the associated company documents may be seen at all reasonable hours (s 9(4)(b)); and (3) stating that any person who wishes to make representations to the minister with respect to (a) the proposed transfer; or (b) any provisions of the scheme or of the associated company documents (s 9(4)(c)), should do so in writing before the end of the period of 42 days beginning with the date (specifying it) of the first local advertisement (s 9(4)). References, in relation to a notice under s 9(3) or s 12(3) (see PARA 777 post) affecting a harbour, to the date of the first local advertisement are references to the date of the first publication of the notice in a local newspaper circulating in the locality where the harbour is situated: s 20(3)(b). For the meaning of 'person' see PARA 605 note 4 ante. For the meaning of 'writing' see PARA 605 note 3 ante.

13 Ibid s 9(3)(b)(i).

14 Ibid s 9(3)(b)(ii).

15 Is the requirements of ibid s 9(3), (4): see the text and notes 11-14 supra.

16 Ibid s 9(5)(a).

17 Ibid s 9(5)(b).

18 Ibid s 9(6).

19 Ibid s 9(6)(a).

20 As to directions generally see PARA 770 note 8 ante.

21 Is the company mentioned in the Ports Act 1991 s 9(1): see text to notes 1-6 supra.

22 Ibid s 9(6)(b).

23 Ibid s 9(7). The power to make an order is exercisable by statutory instrument: see s 37(1). No order may be made under s 9(7) as applying in relation to a scheme submitted under s 10 (see PARA 775 post) unless a draft of the instrument containing the order has been laid before, and approved by a resolution of each House of Parliament: s 37(3), (4)(a). If the draft of the order under s 9(7) would otherwise be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument: s 37(6). As to hybrid instruments see PARLIAMENT vol 34 (Reissue) PARAS 839 et seq.

946; STATUTES vol 44(1) (Reissue) PARA 1212. Orders made under s 9, being local in nature, are not recorded in this work.

UPDATE

774 Schemes made by relevant port authorities

TEXT AND NOTE 10--Ports Act 1991 s 9(2) amended: SI 2009/1941.

TEXT AND NOTES 15-22--Ports Act 1991 s 9(6)(b) amended: SI 2009/1941.

TEXT AND NOTES 27-30--Ports Act 1991 s 12(7)(b) amended: SI 2009/1941.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/10. PRIVATISATION OF CERTAIN PORT UNDERTAKINGS/(3) PROCEDURE FOR SCHEMES/775. Schemes initiated by the Secretary of State.

775. Schemes initiated by the Secretary of State.

The Secretary of State¹ may² give to a relevant port authority³ which has not formed a company⁴ and which meets the annual turnover requirement⁵ a direction requiring it to form such a company before such date as may be specified in the direction⁶. Where a relevant port authority which meets the annual turnover requirement has formed such a company⁷, or is given a direction⁸ requiring it to do so before a date specified in the direction⁹, the Secretary of State may give to the authority a direction requiring it (in a case where the relevant port authority is given a direction requiring it to form a company before a specified date, after first forming the company) to submit to him, before such date as may be specified in the direction, a scheme prepared by the authority for the purposes of a transfer¹⁰ to the company of the authority's property, rights, liabilities¹¹ and functions¹².

Directions under the above provisions¹³ may be given at the same time if the Secretary of State thinks fit¹⁴. Before giving any direction to a relevant port authority under the above provisions the Secretary of State must consult the authority¹⁵. Where after so consulting a relevant port authority with respect to any direction or directions which he is considering giving to the authority the Secretary of State determines not to give the direction, or either or both of the directions, under consideration he must give the authority written¹⁶ notification of his decision¹⁷.

1 As to the Secretary of State see PARA 603 ante.

2 This power under the Ports Act 1991 s 10 has been exercisable since 25 July 1993 (ie since the date following the end of the period of two years beginning with the date on which the Act was passed): see s 10(1).

3 For the meaning of 'relevant port authority' see PARA 763 note 1 ante.

4 Ie in pursuance of the Ports Act 1991 s 1: see PARA 763 ante.

5 'The annual turnover requirement' means the annual turnover requirement under ibid s 11 (as amended) (see PARA 776 post): s 10(10).

6 Ibid s 10(2). As to directions generally see PARA 770 note 8 ante.

7 Ibid s 10(3)(a).

8 Ie a direction under ibid s 10(2): see the text to notes 1-6 supra.

9 Ibid s 10(3)(b).

10 le a transfer under *ibid* s 2: see PARA 764 ante.

11 For the meaning of 'liability' see PARA 763 note 3 ante.

12 Ports Act 1991 s 10(3). For the meaning of 'functions' see PARA 763 note 4 ante. In preparing that scheme the authority must take into account any advice given by the Secretary of State as to the provisions he regards as appropriate for inclusion in the scheme: s 10(4). The provisions of s 9(2)-(7) (see PARA 774 ante) apply in relation to a scheme submitted under s 10 as they apply in relation to a scheme submitted under s 9 (but reading references to the appropriate minister as references to the Secretary of State): s 10(5). As to the Secretary of State's powers to make a scheme where it appears to him that the authority's scheme does not accord with any advice given by him under s 10(4) see PARA 777 post.

13 le under *ibid* s 10(2) and (3): see the text to notes 1-12 supra.

14 *Ibid* s 10(9).

15 *Ibid* s 10(6). As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2100) PARA 627.

16 For the meaning of 'written' see PARA 605 note 3 ante.

17 Ports Act 1991 s 10(7). In any case within s 10(7) the powers of the Secretary of State under s 10 cease to be exercisable in relation to the authority until after the end of the period of five years beginning with the date on which the required notification is given: s 10(8).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/10. PRIVATISATION OF CERTAIN PORT UNDERTAKINGS/(3) PROCEDURE FOR SCHEMES/776. The annual turnover requirement.

776. The annual turnover requirement.

A relevant port authority¹ meets the annual turnover requirement² at the time when any direction is given³ to that authority by the Secretary of State⁴ if the annual turnover of the authority's port undertaking⁵ exceeded the turnover limit⁶ in the case of at least two of the last three accounting years of the authority ending before that time⁷.

1 For the meaning of 'relevant port authority' see PARA 763 note 1 ante.

2 le the requirement mentioned in the Ports Act 1991 s 10: see PARA 775 ante.

3 le under *ibid* s 10: see PARA 775 ante.

4 As to the Secretary of State see PARA 603 ante.

5 References, in relation to a relevant port authority, to the authority's port undertaking are references to all activities of the authority in relation to which the authority is required under the Harbours Act 1964 s 42(1) (as substituted) (see PARA 684 ante) to prepare annual statements of accounts: Ports Act 1991 s 11(2).

6 The turnover limit, in relation to any accounting year of a relevant port authority, is the turnover limit applicable to the reference year in which that accounting year ends: *ibid* s 11(6)(a). The accounting year in relation to a relevant port authority means any period in respect of which the authority is required under the Harbours Act 1964 s 42 (as substituted and amended) (see PARA 684 ante) to prepare annual statements of accounts: Ports Act 1991 s 20(1). The reference years are the year ending immediately before 25 July 1991 (ie the date on which the Ports Act 1991 was passed) ('the base date'), the year beginning with that date and each succeeding year beginning with an anniversary of that date: s 11(6)(b). The turnover limit applicable to a reference year is £5m unless s 11(7) applies, in which case it is the amount determined under that provision: s 11(6)(c). Where in the case of any anniversary of the base date the retail prices index for the month in which that anniversary falls shows a percentage increase over that for the month in which the base date falls, the turnover limit applicable to the reference year beginning with that anniversary is an amount arrived at by: (1) increasing the sum of £5m by a percentage equal to that percentage increase; and (2) rounding the result to the nearest £100,000: s 11(7). The Secretary of State must publish in the London Gazette the turnover limit applicable to any reference year beginning with an anniversary of the base date as soon as practicable after

that anniversary: s 11(8). The reference in s 11(7) to the retail prices index is a reference to the general index of retail prices (for all items) published by the Office for National Statistics; and if that index is not published for any month relevant for the purposes of s 11(7) that reference is to be read as a reference to any substituted index or index figures published by that Office for that month: s 11(9) (amended by the Transfer of Functions (Registration and Statistics) Order 1996, SI 1996/273, art 5(1), Sch 2 para 26).

7 Ports Act 1991 s 11(1). For the purposes of s 11(1), the annual turnover of a relevant port authority's port undertaking for any accounting year of the authority is the aggregate, as stated in any statement of accounts prepared under the Harbours Act 1964 s 42(1) (as substituted) (see PARA 684 ante) in respect of that accounting year, of all sums received by the authority during that year: Ports Act 1991 s 11(3). The reference in s 11(3) to sums received by the authority does not include sums received by way of grant from any public authority or any capital receipts or loans: s 11(4).

Where a relevant port authority is required under the Harbours Act 1964 s 42(2) (as substituted) (see PARA 684 ante) to prepare annual statements of accounts relating to activities carried on by the authority and subsidiaries of the authority: (1) the reference in the Ports Act 1991 s 11(2) (see note 5 supra) to activities of the authority is to be read as including a reference to activities of any subsidiary of the authority; (2) the references in s 11(2), (3) to the Harbours Act 1964 s 42(1) (as substituted) must be read as references to s 42(2) (as substituted); and (3) the reference in the Ports Act 1991 s 11(3) to sums received by the authority must be read as including a reference to sums received by any subsidiary of the authority which are shown in the statement of accounts there mentioned (and s 11(4) is to apply accordingly): s 11(5). For the meaning of 'subsidiary' see PARA 764 note 3 ante.

UPDATE

776 The annual turnover requirement

NOTE 6--Reference to Office for National Statistics now to Statistics Board (see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 605): 1991 Act s 11(9) (amended by Statistics and Registration Service Act 2007 Sch 3 para 7).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/10. PRIVATISATION OF CERTAIN PORT UNDERTAKINGS/(3) PROCEDURE FOR SCHEMES/777. Schemes made by the Secretary of State.

777. Schemes made by the Secretary of State.

Where the authority's scheme¹ has been submitted² to the Secretary of State³ by a relevant port authority⁴, but it appears to him that the scheme does not accord with any advice given by him⁵ and cannot be made to do so by any modifications it is within his power to make⁶, the Secretary of State may himself make a scheme for the purposes of a transfer⁷ to the company specified in the authority's scheme of the authority's property, rights, liabilities⁸ and functions⁹. The Secretary of State must consult the authority before preparing the scheme¹⁰, and before making the scheme he must publish by Gazette and local advertisement¹¹ a notice:

- 217 (1) stating that he proposes to make a scheme for the purposes of a proposed transfer¹² to a company formed by the authority of the authority's property, rights, liabilities and functions¹³;
- 218 (2) naming a place where copies of the proposed scheme and any associated company documents¹⁴ may be seen at all reasonable hours¹⁵; and
- 219 (3) stating that any person¹⁶ who wishes to make representations to him with respect to: (a) the proposed transfer¹⁷; or (b) any provisions of the proposed scheme or of any associated company documents¹⁸, should do so in writing¹⁹ before the end of the period of 42 days beginning with the date (specifying it) of the first local advertisement²⁰.

On or before the date of the first local advertisement the Secretary of State must serve on the authority a copy of the proposed scheme and a notice²¹ stating that the Secretary of State proposes to make the scheme²² and directing²³ the authority to take such steps as are reasonably practicable to give such information as may be specified in the notice, in such manner as may be so specified, to every person on whom that authority would be required²⁴ to serve notice relating to such a scheme prepared by that authority²⁵.

The Secretary of State must not make the scheme until after the end of the period allowed for making representations to him with respect to the proposed transfer or any provisions of the proposed scheme or of any associated company documents²⁶. He must decide whether or not to make the scheme after considering any such representations duly made to him before the end of that period and not withdrawn²⁷. If he decides to make the scheme, he may make it as proposed or with such modifications as he thinks fit after consulting the authority concerned²⁸; and he may first (if he thinks fit) give the authority a direction requiring it, before such date as may be specified in the direction, to secure that such alterations are made to the memorandum and articles of the company²⁹ as may be specified in the direction³⁰.

Any scheme made by the Secretary of State under the above provisions must be made by order; and a scheme so made takes effect on the date on which the order in question comes into force or on such date as may be specified in that order³¹.

1 For the meaning of 'the authority' see PARA 764 note 4 ante; and for the meaning of 'the scheme' see PARA 764 note 1 ante.

2 Ie submitted under the Ports Act 1991 s 10: see PARA 775 ante.

3 As to the Secretary of State see PARA 603 ante.

4 Ports Act 1991 s 12(1)(a). For the meaning of 'relevant port authority' see PARA 763 note 1 ante.

5 Ie advice given as mentioned in ibid s 10(4): see PARA 775 ante.

6 Ibid s 12(1)(b).

7 Ie a transfer under ibid s 2: see PARA 764 ante.

8 For the meaning of 'liability' see PARA 763 note 3 ante.

9 Ports Act 1991 s 12(1). For the meaning of 'functions' see PARA 763 note 4 ante.

10 Ibid s 12(2). As to the exercise of the duty to consult see JUDICIAL REVIEW vol 61 (2100) PARA 627.

11 As to the meaning of 'Gazette and local advertisement' see PARA 774 note 11 ante.

12 Ie a proposed transfer under the Ports Act 1991 s 2: see PARA 764 ante.

13 Ibid s 12(3)(a).

14 References to any associated company documents are references to any documents submitted under ibid s 9(2) (see PARA 774 ante) with the authority's scheme: s 12(9).

15 Ibid s 12(3)(b).

16 For the meaning of 'person' see PARA 605 note 4 ante.

17 Ports Act 1991 s 12(3)(c)(i).

18 Ibid s 12(3)(c)(ii).

19 For the meaning of 'writing' see PARA 605 note 3 ante.

20 Ports Act 1991 s 12(3). As to the meaning of 'first local advertisement' see PARA 774 note 12 ante.

- 21 Ibid s 12(4).
- 22 Ibid s 12(5)(a).
- 23 As to directions generally see PARA 770 note 8 ante.
- 24 Ie required under the Ports Act 1991 s 9(3)(b): see PARA 774 ante.
- 25 Ibid s 12(5)(b).
- 26 Ibid s 12(6).
- 27 Ibid s 12(7).
- 28 Ibid s 12(7)(a).
- 29 Ie the company mentioned in ibid s 12(1): see the text to notes 1-9 supra.
- 30 Ibid s 12(7)(b).
- 31 Ibid s 12(8). The power to make such an order is exercisable by statutory instrument: s 37(1). No order made under s 12(8) may be made unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament: s 37(3), (4)(b). If the draft of the order under s 12(8) would otherwise be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument: s 37(6). As to hybrid instruments see PARLIAMENT VOL 34 (Reissue) PARAS 839 et seq, 946; STATUTES VOL 44(1) (Reissue) PARA 1212. Orders made under s 12, being local in nature, are not recorded in this work.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/10. PRIVATISATION OF CERTAIN PORT UNDERTAKINGS/(4) LEVIES ON DISPOSALS/(i) Levy on Initial Disposals of Securities of Successor Companies/778. Levy on initial disposals of securities of successor companies.

(4) LEVIES ON DISPOSALS

(i) Levy on Initial Disposals of Securities of Successor Companies

778. Levy on initial disposals of securities of successor companies.

A levy is chargeable on the disposal of securities¹ of a company made² by a former relevant port authority³. Levy⁴ is charged at the rate of 50 per cent on the consideration given for the securities disposed of⁵. There is allowed as a deduction from the amount on which levy would otherwise be chargeable any expenditure wholly and exclusively incurred for the purposes of the disposal by the former relevant port authority, being:

- 220 (1) fees, commissions or remuneration paid for professional services⁶;
- 221 (2) costs incurred⁷ in connection with any proposal for maximising participation by employees of the company whose securities are the subject of the disposal in ownership of its equity share capital (whether or not the disposal is made for the purposes of implementing any such proposal)⁸;
- 222 (3) costs of transfer⁹; or
- 223 (4) costs of advertising¹⁰.

Where: (a) a scheme has been effected or arrangements have been made (whether before or after a disposal) whereby the value of securities disposed of has been materially reduced¹¹; and (b) the aim or one of the aims of the scheme or arrangements is decreasing liability to levy¹²,

the amount on which levy would be chargeable apart from this provision¹³ is to be increased by such amount as appears to the appropriate minister¹⁴ to be appropriate¹⁵.

1 For the meaning of 'securities' see PARA 764 note 14 ante. For the purposes of the Ports Act 1991 ss 13-16 (as amended), a disposal of rights to require the issue of securities of a company is to be treated as a disposal of the securities: s 16(2).

2 le made in pursuance of any provision for such disposal made under *ibid* s 4(3): see PARA 769 ante.

3 *Ibid* s 13(1). References to a former relevant port authority are references to any body which immediately before a transfer under s 2 (see PARA 764 ante) was a relevant port authority: s 40(2)(b). For the meaning of 'relevant port authority' see PARA 763 note 1 ante; and for the meaning of 'body' see PARA 764 note 14 ante. As to the payment of the levy see PARAS 779-780 post; as to information for the purposes of the levy see PARA 781 post; and as to the effect of the levy on the computation of tax see PARA 782 post.

4 'Levy', in *ibid* ss 13-16 (as amended), means levy under s 13(1) (see the text to notes 1-3 supra): s 16(1).

5 *Ibid* s 13(2). The Secretary of State may, with the consent of the Treasury, by order substitute for the percentage for the time being specified in s 13(2) such other percentage as may be specified in the order: s 13(5). The power to make such an order is exercisable by statutory instrument: s 37(1). No order may be made under s 13(5) unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, the House of Commons: s 37(2). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 603 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

6 *Ibid* s 13(3)(a).

7 le costs incurred in pursuance of *ibid* s 19: see PARA 787 post.

8 *Ibid* s 13(3)(b). For the meaning of 'equity share capital' see PARA 764 note 14 ante; and as to maximising participation by employees of the company in ownership of its equity share capital see PARA 764 note 14 ante. For the purposes of s 13(3)(b), a person employed by a company which is a wholly-owned subsidiary of any company or other body mentioned in that provision is to be regarded as employed by the company or other body so mentioned: s 40(3), (4). For the meaning of 'wholly-owned subsidiary' see PARA 764 note 3 ante.

9 *Ibid* s 13(3)(c).

10 *Ibid* s 13(3)(d).

11 *Ibid* s 13(4)(a).

12 *Ibid* s 13(4)(b).

13 le chargeable apart from *ibid* s 13(4).

14 As to the appropriate minister see PARA 767 note 4 ante.

15 Ports Act 1991 s 13(4).

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779. Payment of levy.

Levy¹ chargeable on a disposal² must be paid to the appropriate minister³ by the former relevant port authority by whom the disposal was made⁴. A person⁵ who is liable to make a payment of levy but does not make payment of the amount due during the period within which it is payable must also pay to the appropriate minister interest on the unpaid levy at the rate applicable⁶ from the first day after the end of that period until payment of the levy is made⁷.

- 1 For the meaning of 'levy' see PARA 778 note 4 ante.
- 2 A disposal made by a nominee of the former relevant port authority is to be regarded for the purposes of the Ports Act 1991 s 14 as made by the authority: s 14(6). For the meaning of 'former relevant port authority' see PARA 778 note 3 ante.
- 3 As to the appropriate minister see PARA 767 note 4 ante.
- 4 Ports Act 1991 s 14(1). The amount of the levy must be assessed by the appropriate minister who must serve a notice of assessment on the former relevant port authority stating the date of issue of the notice of assessment and the effect of s 14(3): s 14(2). As to the power of the authority to request reconsideration of the assessment see PARA 780 post. Except as provided by s 15A (as added) (see PARA 780 post), a notice of assessment under s 14(2) is not to be questioned in any legal proceedings whatsoever: s 15A(6) (added by the Finance Act 1995 s 159(1)). The amount assessed is payable within the period of three months beginning with the day on which the disposal was made or within the period of 30 days beginning with the date of issue of the notice of assessment, if that period ends later: Ports Act 1991 s 14(3). As to determining the time when a disposal (ie of securities, or of rights to require the issue of securities, of a company (see PARA 778 note 1 ante)) is made see PARA 769 note 9 ante.
- 5 For the meaning of 'person' see PARA 605 note 4 ante.
- 6 Ie at the rate applicable under the Finance Act 1989 s 178 (as amended): see INCOME TAXATION vol 23(2) (Reissue) PARA 1813.
- 7 Ports Act 1991 s 14(4). The interest must be paid without deduction of tax: s 14(4).

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780. Reconsideration of the amount of assessment.

Where a notice of assessment has been served¹ on a former relevant port authority², the authority may³ by notice in writing⁴ request the appropriate minister⁵ to reconsider the amount of the assessment⁶. The request must set out the grounds on which the authority alleges that the amount assessed is incorrect⁷. If a request for reconsideration is duly made, the appropriate minister must reconsider the amount of the assessment and may confirm or reduce it⁸.

The appropriate minister may reconsider the amount of an assessment⁹ in any other case, if he thinks fit, and may confirm or reduce it¹⁰.

- 1 Ie served under the Ports Act 1991 s 14(2): see PARA 779 ante.
- 2 For the meaning of 'former relevant port authority' see PARA 778 note 3 ante.
- 3 Ie within the period mentioned in the Ports Act 1991 s 14(3): see PARA 779 note 4 ante.
- 4 For the meaning of 'writing' see PARA 605 note 3 ante.
- 5 As to the appropriate minister see PARA 767 note 4 ante.
- 6 Ports Act 1991 s 15A(1) (s 15A added by the Finance Act 1995 s 159(1)). If it appears to the minister that there are reasonable grounds for believing that the amount of the assessment may be excessive, he may direct that the provisions of the Ports Act 1991 s 14(3), (4) (see PARA 779 ante) are not to apply to the whole amount of the assessment but only to such lesser amount as he may specify: s 15A(2) (as so added). As to directions generally see PARA 770 note 8 ante.
- 7 Ibid s 15A(1) (as added: see note 6 supra).

8 Ibid s 15A(3) (as added: see note 6 supra). In England and Wales an appeal lies to the High Court from any decision of the minister under s 15A(3) (as added): s 15A(3) (as so added). As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq.

When the amount of the assessment is finally determined: (1) if the amount of the assessment is less than the amount paid by the authority, the appropriate minister must make such payment to the authority as is required to put the authority in the same position as if the reduced amount had been specified in the original assessment (s 15A(5)(a) (as so added)); (2) if a further amount is payable by the authority, s 14(3), (4) (see PARA 779 ante) applies in relation to that amount as if the reference to the date of issue of the notice of assessment were a reference to the date of the determination (s 15A(5)(b) (as so added)). Except as provided by s 15A (as added), a notice of assessment under s 14(2) is not to be questioned in any legal proceedings whatsoever: s 15A(6) (as so added). As to the interpretation of provisions ousting the jurisdiction of the courts see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 21.

9 Ie an assessment under ibid s 14(2): see PARA 779 ante.

10 Ibid s 15A(4) (as added: see note 6 supra). See also note 8 supra.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/10. PRIVATISATION OF CERTAIN PORT UNDERTAKINGS/(4) LEVIES ON DISPOSALS/(i) Levy on Initial Disposals of Securities of Successor Companies/781. Notification of disposal.

781. Notification of disposal.

Where a former relevant port authority¹, or a nominee of such an authority², makes a disposal of securities³ on which levy⁴ is chargeable, the authority must give to the appropriate minister⁵, not later than 30 days after the day on which the disposal is made⁶, written⁷ notification that the disposal has been made⁸. The appropriate minister may by notice in writing require:

- 224 (1) a former relevant port authority⁹;
- 225 (2) any nominee of such an authority who has made a disposal of securities on which levy is chargeable¹⁰;
- 226 (3) a person¹¹ to whom such a disposal has been made¹²; or
- 227 (4) a company whose securities have been the subject of such a disposal¹³,

to deliver to him certain documents¹⁴, or to furnish to him certain particulars¹⁵, within such time, not less than 30 days after the date of the notice, as may be specified in the notice¹⁶.

Where a former relevant port authority fails to give such notification¹⁷, or such an authority or any other person fails to comply with such a notice¹⁸, the authority or that other person is liable to a penalty¹⁹. If the failure continues after the penalty is imposed a further penalty is payable²⁰. Where a person fraudulently or negligently furnishes any incorrect particulars in response to a notice²¹ he is also liable to a penalty²².

Proceedings for a penalty²³ are to be instituted by the appropriate minister before the High Court, and any penalty imposed by the court is to be paid to the appropriate minister²⁴.

1 Ports Act 1991 s 15(1)(a). For the meaning of 'former relevant port authority' see PARA 778 note 3 ante.

2 Ibid s 15(1)(b).

3 For the meaning of 'securities' see PARA 764 note 14 ante. As to disposals of securities see PARA 778 note 1 ante.

4 For the meaning of 'levy' see PARA 778 note 4 ante.

5 As to the appropriate minister see PARA 767 note 4 ante.

- 6 As to determining the time when a disposal is made see PARA 769 note 9 ante.
- 7 For the meaning of 'written' see PARA 605 note 3 ante.
- 8 Ports Act 1991 s 15(1).
- 9 Ibid s 15(2)(a).
- 10 Ibid s 15(2)(b).
- 11 For the meaning of 'person' see PARA 605 note 4 ante.
- 12 Ports Act 1991 s 15(2)(c).
- 13 Ibid s 15(2)(d).
- 14 I.e documents specified or described in the notice under ibid s 15(2) which are in the possession or power of the person to whom the notice is given and which (in the opinion of the appropriate minister) contain, or may contain, information relevant to a liability to levy or to the amount of such a liability: s 15(3)(a).
- 15 I.e particulars specified or described in the notice which the appropriate minister may reasonably require as being relevant to, or to the amount of, a liability to levy: ibid s 15(3)(b).
- 16 Ibid s 15(2).
- 17 I.e a notification in accordance with ibid s 15(1): see the text and notes 1-8 supra.
- 18 I.e a notice under ibid s 15(2): see the text and notes 9-16 supra.
- 19 Ibid s 15(4). The penalty is a penalty not exceeding £300: s 15(4)(a).
- 20 I.e a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty under ibid s 15(4)(a) (see the text and note 19 supra) was imposed (but excluding any day for which a penalty under this provision has already been imposed): s 15(4)(b).
- 21 I.e a notice under ibid s 15(2): see the text and notes 9-16 supra.
- 22 Ibid s 15(5). The amount of the penalty is not to exceed £3,000: s 15(5).
- 23 I.e a penalty under ibid s 15.
- 24 Ibid s 15(6). Proceedings within s 15(6) may not be instituted later than six years after the date on which the penalty was incurred or began to be incurred: s 15(7). Any proceedings within s 15(6) instituted in England and Wales are deemed to be civil proceedings by the Crown within the meaning of the Crown Proceedings Act 1947 Pt II (ss 13-23) (as amended) (see CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 115 et seq); Ports Act 1991 s 15(8). As to the High Court of Justice in England and Wales see COURTS vol 10 (Reissue) PARA 602 et seq.

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782. Effect of levy on the computation of tax.

A payment of levy¹ by a former relevant port authority² is allowable as a deduction from the consideration in the computation under the Taxation of Chargeable Gains Act 1992 of the gain accruing to the authority on a disposal of securities³ on which levy is chargeable; but, subject to that, no payment of levy, interest on unpaid levy or penalty⁴ is allowed as a deduction in computing any income, profits or losses for any tax purposes⁵.

- 1 For the meaning of 'levy' see PARA 778 note 4 ante.
- 2 For the meaning of 'former relevant port authority' see PARA 778 note 3 ante.
- 3 For the meaning of 'securities' see PARA 764 note 14 ante. As to disposal of securities see PARA 778 note 1 ante.
- 4 The penalty under the Ports Act 1991 s 15: see PARA 781 ante.
- 5 Ibid s 16(3) (s 16(3), (4) amended by the Taxation of Chargeable Gains Act 1992 s 290(1), Sch 10 para 24(1)). The Taxation of Chargeable Gains Act 1992 s 17(1) (disposals and acquisitions treated as made at market value: see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 41) does not apply to a disposal of securities of a company on which levy is chargeable: Ports Act 1991 s 16(4) (as so amended).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/10. PRIVATISATION OF CERTAIN PORT UNDERTAKINGS/(4) LEVIES ON DISPOSALS/(i) Levy on Initial Disposals of Securities of Successor Companies/783. Payments into the Consolidated Fund.

783. Payments into the Consolidated Fund.

There must be paid into the Consolidated Fund¹:

- 228 (1) all payments of levy² received by the appropriate minister³;
- 229 (2) all interest paid to the appropriate minister on unpaid levy⁴; and
- 230 (3) all penalties paid to the appropriate minister⁵.

- 1 As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.
- 2 For the meaning of 'levy' see PARA 778 note 4 ante.
- 3 Ports Act 1991 s 16(5)(a). As to the appropriate minister see PARA 767 note 4 ante. As to the payment of levy see s 14; and PARA 779 ante.
- 4 Ibid s 16(5)(b). As to the payment of interest see s 14; and PARA 779 ante.
- 5 Ibid s 16(5)(c). As to the payment of penalties see s 15; and PARA 781 ante.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/10. PRIVATISATION OF CERTAIN PORT UNDERTAKINGS/(4) LEVIES ON DISPOSALS/(ii) Levy on Disposals of Land and Interests in Land/784. Levy on disposals of land and interests in land.

(ii) Levy on Disposals of Land and Interests in Land

784. Levy on disposals of land and interests in land.

Where property, rights, liabilities¹ and functions² of a relevant port authority³ are transferred⁴ to a company ('the chargeable company'), a levy is chargeable in respect of any gain accruing to the company on a chargeable disposal⁵ of relevant land⁶ or a relevant interest in land⁷, made within the levy period (that is, the period of ten years beginning with the date on which the company ceases to be a wholly-owned subsidiary⁸ of the body⁹ which immediately before the transfer was the relevant port authority in question)¹⁰.

The Secretary of State may by order¹¹ make provision:

- 231 (1) for determining when and by whom any disposal of land or an interest in land is to be regarded¹² as being made¹³;
- 232 (2) specifying the descriptions of disposal which are to be chargeable disposals¹⁴;
- 233 (3) for determining in what circumstances a gain is to be regarded¹⁵ as accruing to the chargeable company on such a disposal and the amount of any gain so accruing¹⁶; and
- 234 (4) for the administration, assessment, collection and recovery of levy¹⁷.

Such an order may contain such supplementary, incidental or consequential provisions as appear to the Secretary of State to be appropriate¹⁸. In particular, the Secretary of State may make provision:

- 235 (a) for treating a disposal of land or an interest in land as being made at any specified time notwithstanding that it is not the time at which the disposal takes place, or is to be regarded as taking place, for the purposes of the Taxation of Chargeable Gains Act 1992¹⁹;
- 236 (b) for treating a gain as accruing to the chargeable company in specified circumstances on a disposal of land or an interest in land notwithstanding that no actual benefit accrues to that company on the disposal (including in particular circumstances where the disposal is made by a person²⁰ other than that company)²¹;
- 237 (c) for treating a disposal made in specified circumstances as having been made for consideration of any specified description²²;
- 238 (d) with respect to the principles, assumptions and methods to be applied in making any valuation of land or an interest in land for the purpose of determining the amount of any gain accruing on a disposal²³;
- 239 (e) with respect to the payment of interest at such rate as may be specified, or as may be determined by or under the order, in respect of any amount of levy not paid within the period during which it is payable in accordance with the order²⁴;
- 240 (f) imposing penalties (including continuing penalties) in respect of contraventions of provisions of any order²⁵ relating to levy on the disposal of land²⁶; and
- 241 (g) applying for any purposes of the order any statutory provisions relating to corporation tax on chargeable gains with such modifications as may be specified²⁷.

1 For the meaning of 'liability' see PARA 763 note 3 ante.

2 For the meaning of 'functions' see PARA 763 note 4 ante.

3 For the meaning of 'relevant port authority' see PARA 763 note 1 ante.

4 Ie transferred under the Ports Act 1991 s 2: see PARA 764 ante.

5 There is a disposal of land or an interest in land for the purposes of *ibid* s 17 (as amended) and s 18 (as amended) (see notes 7, 10 *infra*; and PARA 785 post) if there would be such a disposal for the purposes of the Taxation of Chargeable Gains Act 1992 (see CAPITAL GAINS TAXATION): Ports Act 1991 s 17(5) (amended by the Taxation of Chargeable Gains Act 1992 s 290(1), Sch 10 para 24(2)). In addition, there is such a disposal for the purposes of the Ports Act 1991 s 17 (as amended) in any case where: (1) there would be such a disposal for the purposes of the Taxation of Chargeable Gains Act 1992 by virtue of s 178(3), s 178(5), s 179(3) or s 179(6) (deemed disposal of assets by company leaving a group: see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARAS 191-192) if the relevant six-year limit were disregarded; and (2) the operative time falls within the levy period: Ports Act 1991 s 17(6) (amended by the Taxation of Chargeable Gains Act 1992 Sch 10 para 24(2)). 'The relevant six-year limit' means, in relation to the Taxation of Chargeable Gains Act 1992 s 178(3) or s 179(3), the six year period mentioned in s 178(1) (as amended) or s 179(1) (as amended) (see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 191) and, in relation to s 178(5) or s 179(6), the six year period mentioned in s 178(5) (a) or s 179(6)(a): Ports Act 1991 s 17(7)(a) (substituted by the Taxation of Chargeable Gains Act 1992 Sch 10 para 24(2)). 'The operative time' means, in relation to the Taxation of Chargeable Gains Act 1992 s 178(3) or s

179(3), the time when the company in question ceases for the purposes of s 178 (as amended) or s 179 (as amended) (as the case may be) to be a member of the group referred to in s 178(1) (as amended) or s 179(1) (as amended), or, in relation to s 178(5) or s 179(6), the time when the company in question ceases to satisfy the conditions specified in s 178(6) or s 179(7): Ports Act 1991 s 17(7)(b) (amended by the Taxation of Chargeable Gains Act 1992 Sch 10 para 24(2)).

6 Land is 'relevant land' if: (1) it is transferred by the transfer; or (2) it belongs both immediately before and immediately after the transfer to a transferred 51% subsidiary: Ports Act 1991 s 17(2)(a). 'Transferred 51% subsidiary' means, in relation to a transfer under s 2 (see PARA 764 ante), a company which: (a) immediately before the transfer is an effective 51% subsidiary of the relevant port authority in question; and (b) by virtue of the transfer becomes such a subsidiary of the chargeable company: s 17(12)(b). 'Effective 51% subsidiary' has the meaning that it would have for the purposes of the Taxation of Chargeable Gains Act 1992 ss 170-181 (as amended) by virtue of s 170(7), (8) (as amended) (see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 185) if the word 'or' were substituted for the word 'and' between s 170(7)(a) and s 170(7)(b) (by virtue of which, for a company to be an effective 51% subsidiary of another company, that other company must meet conditions both as to entitlement to profits and as to entitlement to assets on a winding up): Ports Act 1991 s 17(13) (amended by the Taxation of Chargeable Gains Act 1992 Sch 10 para 24(2)). For the meaning of 'land' see PARA 712 note 5 ante.

7 An interest in land is a 'relevant interest' if: (1) it is transferred by the transfer; (2) it belongs both immediately before and immediately after the transfer to a transferred 51% subsidiary; or (3) it is an interest of any specified description in land which is relevant land or in land in which a relevant interest within head (1) or head (2) supra subsists at the time of the transfer: Ports Act 1991 s 17(2)(b). 'Specified' means specified in an order under s 17 (as amended): s 17(12)(a). In s 17 (as amended) and s 18 (as amended) (see PARA 785 post) references to an interest in land include any right in, over or in relation to land: s 18(8)(b).

8 For the meaning of 'wholly-owned subsidiary' see PARA 764 note 3 ante.

9 For the meaning of 'body' see PARA 764 note 14 ante.

10 Ports Act 1991 s 17(1). The levy is charged:

- 27 (1) at the rate of 25% on the amount of the gain, in the case of a disposal made within the first five years of the levy period (s 17(3)(a));
- 28 (2) at the rate of 20% on the amount of the gain, in the case of a disposal made within the sixth or seventh year of that period (s 17(3)(b)); and
- 29 (3) at the rate of 10% on the amount of the gain, in the case of a disposal made during the remainder of that period (s 17(3)(c)).

The Secretary of State may, with the consent of the Treasury, by order substitute for any percentage for the time being specified in s 17(3) such other percentage as may be specified in the order: s 18(1). As to the making of orders under s 18(1) see note 11 infra. At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 603 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517. The levy must be paid by the chargeable company to the appropriate minister: s 17(4). As to the appropriate minister see PARA 767 note 4 ante.

11 The power to make an order under the Ports Act 1991 is exercisable by statutory instrument: s 37(1). No order may be made under s 17 (as amended) or s 18(1) (see note 10 supra) unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, the House of Commons: s 37(2). An order under s 17 (as amended) may make different provision for different cases to which it applies (and in particular for different descriptions of disposals): s 17(11). As to the order that has been made see the Ports Act 1991 (Levy on Disposals of Land, etc) Order 1992, SI 1992/58.

12 Ie for the purposes of the Ports Act 1991 s 17 (as amended).

13 Ibid s 17(8)(a).

14 Ibid s 17(8)(b).

15 Ie for the purposes of ibid s 17 (as amended).

16 Ibid s 17(8)(c).

17 Ibid s 17(8)(d).

18 Ibid s 17(8).

19 Ibid s 17(9)(a) (amended by the Taxation of Chargeable Gains Act 1992 Sch 10 para 24(2)). The purposes referred to in the text are those of the Taxation of Chargeable Gains Act 1992 (including that Act as it applies by virtue of the Ports Act 1991 s 17(6) (as amended): see note 5 supra): see s 17(9)(a) (as so amended). The provision referred to in head (a) in the text includes provision for treating a disposal as being made at a time falling within the levy period notwithstanding that for the purposes there mentioned it takes place, or is to be regarded as taking place, before the beginning of that period: s 17(10).

20 For the meaning of 'person' see PARA 605 note 4 ante.

21 Ports Act 1991 s 17(9)(b).

22 Ibid s 17(9)(c).

23 Ibid s 17(9)(d).

24 Ibid s 17(9)(e).

25 Ie under ibid s 17 (as amended).

26 Ibid s 17(9)(f).

27 Ibid s 17(9)(g).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/10. PRIVATISATION OF CERTAIN PORT UNDERTAKINGS/(4) LEVIES ON DISPOSALS/(ii) Levy on Disposals of Land and Interests in Land/785. Effect of levy on the computation of tax.

785. Effect of levy on the computation of tax.

Any amount payable or paid by any company in respect of levy¹ on any disposal is allowable as a deduction from the consideration in the computation under the Taxation of Chargeable Gains Act 1992 of the gain accruing to that company or to any other person² on the disposal³. However, it is not so allowable where: (1) apart from the deduction of the levy amount an allowable loss⁴ would accrue to the company or to any other person on the disposal⁵; or (2) such a loss would so accrue if the levy amount were deducted⁶; but in the latter case the person making the disposal is to be treated for the purposes of corporation tax on chargeable gains as if the disposal had been made for a consideration of such amount as would secure that neither a gain nor a loss would accrue to that person⁷.

Except as provided above, no amount payable or paid in respect of levy or interest on such levy is allowed as a deduction or is otherwise to be taken into account in computing any income, profits or losses for any tax purposes⁸.

1 Ie under the Ports Act 1991 s 17 (as amended): see PARA 784 ante.

2 For the meaning of 'person' see PARA 605 note 4 ante.

3 Ports Act 1991 s 18(2) (s 18(2), (4) amended by the Taxation of Chargeable Gains Act 1992 s 290(1), Sch 10 para 24(3)). References in the Ports Act 1991 s 18(3)-(8) (as amended), in relation to any disposal on which levy under s 17 (as amended) (see PARA 784 ante) is chargeable, to the levy amount are references to any amount so payable or paid in respect of the levy: s 18(2) (as so amended). Section 18(2) (as amended) does not apply where a disposal on which levy under s 17 (as amended) is chargeable is one which, by virtue of the Taxation of Chargeable Gains Act 1992 s 139(1) or s 171(1) (company reconstructions and amalgamations and transfers within groups of companies: see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARAS 179, 188), is treated as made for a consideration ('the original consideration') giving rise to neither a gain nor a loss: Ports Act 1991 s 18(4) (as so amended). Where in any case within s 18(4) (as amended) the original consideration is less than the market value at the time of the disposal of the land or interest in land which is the subject of the disposal, the consideration for which the disposal is treated by the provision in question as being made is to be increased by: (1) the levy amount (s 18(5)(a)); or (2) the excess of that market value over the original

consideration, whichever is the less (s 18(5)(b)). In s 18 (as amended), references to an interest in land include any right in, over or in relation to land: s 18(8)(b).

4 'Allowable loss' has the same meaning as in the Taxation of Chargeable Gains Act 1992 (see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 9): Ports Act 1991 s 18(8) (amended by the Taxation of Chargeable Gains Act 1992 Sch 10 para 24(3)).

5 Ports Act 1991 s 18(3)(a).

6 Ibid s 18(3)(b).

7 Ibid s 18(3).

8 Ibid s 18(6).

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786. Payments into the Consolidated Fund.

There must be paid into the Consolidated Fund¹:

- 242 (1) all payments received by the appropriate minister² in respect of levy³;
- 243 (2) all interest paid to the appropriate minister by virtue of any provision of an order⁴ relating to such levy⁵; and
- 244 (3) all penalties paid to the appropriate minister by virtue of any such provision⁶.

1 As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

2 As to the appropriate minister see PARA 767 note 4 ante.

3 Ports Act 1991 s 18(7)(a). The reference in the text to levy is a reference to levy under s 17 (as amended): see PARA 784 ante.

4 Ie an order under ibid s 17 (as amended): see PARA 784 ante.

5 Ibid s 18(7)(b).

6 Ibid s 18(7)(c).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/10. PRIVATISATION OF CERTAIN PORT UNDERTAKINGS/(5) SUPPLEMENTARY PROVISIONS/787. Financial assistance for proposals to maximise employee participation in equity of successor companies.

(5) SUPPLEMENTARY PROVISIONS

787. Financial assistance for proposals to maximise employee participation in equity of successor companies.

A body concerned¹ may, on such terms as it thinks fit, agree with any persons who at the time of the agreement qualify for assistance from it²: (1) to indemnify those persons in respect of the

whole or any part of any expenditure³; or (2) to discharge on their behalf the whole or any part of any liability⁴.

For these purposes⁵, persons qualify for assistance from a body concerned if:

- 245 (a) each of them satisfies the employment condition as regards assistance from the body⁶;
- 246 (b) they have formulated a proposal for maximising participation by employees of the relevant company in ownership of its equity share capital⁷; and
- 247 (c) they appear to the body concerned to have a reasonable prospect of securing that the objective of the proposal is achieved⁸.

Where different persons would qualify for assistance from any body in respect of different proposals, only such of them as appear to the body concerned to have the best prospect of securing that the objective mentioned in head (b) above is achieved is to be regarded as qualifying for such assistance⁹.

1 The power under the Ports Act 1991 s 19(2) is exercisable by: (1) a body which is a relevant port authority in any case where that body proposes to form or has formed a company in pursuance of s 1 (see PARA 763 ante) (s 19(1)(a)); or (2) a body which was such an authority immediately before the transfer under s 2 (see PARA 764 ante) to the company formed by that body of its property, rights, liabilities and functions (s 19(1)(b)); and references in s 19, in relation to any such body, to 'the relevant company' are references to the company it proposes to form or has formed (as the case may require) (s 19(1)). For the meaning of 'body' see PARA 764 note 14 ante; for the meaning of 'relevant port authority' see PARA 763 note 1 ante; for the meaning of 'liability' see PARA 763 note 3 ante; and for the meaning of 'functions' see PARA 763 note 4 ante.

2 Ie qualify under ibid s 19: see the text to notes 5-8 infra.

3 Ibid s 19(2)(a). The expenditure referred to is any expenditure or liability of the persons concerned incurred wholly and exclusively for the purposes of the proposal mentioned in s 19(3)(b) (see head (b) in the text): s 19(2)(a), (4).

4 Ibid s 19(2)(b). The liability referred to in the text is any liability to which s 19(4) (see note 3 supra) applies: see s 19(2)(b).

5 Ie for the purposes of ibid s 19(2): see the text to notes 1-4 supra.

6 Ibid s 19(3)(a). A person satisfies the employment condition as regards assistance under s 19 from any body: (1) so long as it is a relevant port authority, if he is employed by it (s 19(6)(a)); and (2) after it has ceased to be such an authority, if he is employed by the relevant company (s 19(6)(b)). For the purposes of s 19(3)(b) (see head (b) in the text) and s 19(6), a person employed by a company which is a wholly-owned subsidiary of any company or other body mentioned in those provisions is to be regarded as employed by the company or other body so mentioned: s 40(3), (4). For the meaning of 'wholly-owned subsidiary' see PARA 764 note 3 ante.

7 Ibid s 19(3)(b). As to references to maximising participation by employees of the company in ownership of its equity share capital, and for the meaning of 'equity share capital', see PARA 764 note 14 ante. See also note 6 supra.

8 Ibid s 19(3)(c).

9 Ibid s 19(5).

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/10.
 PRIVATISATION OF CERTAIN PORT UNDERTAKINGS/(5) SUPPLEMENTARY PROVISIONS/788.
 Corporation tax and taxation of company distributions.

788. Corporation tax and taxation of company distributions.

Where property, rights, liabilities¹ and functions² of a relevant port authority³ are transferred⁴ to a company formed⁵ to be the authority's successor company⁶, the company is to be treated for all purposes of corporation tax as if it were the same person as the authority⁷.

Where following the transfer to a company⁸ of property, rights, liabilities and functions of a relevant port authority, securities⁹ of the company are issued or allotted to the authority¹⁰, the authority is to be treated for the purposes of corporation tax on chargeable gains as if the securities had been issued or allotted to the authority in consideration of the transfer¹¹. Where an allowable loss¹² would, apart from this provision¹³, accrue to a former relevant port authority¹⁴ on a disposal on which levy¹⁵ is chargeable, the authority is to be treated for the purposes of corporation tax on chargeable gains as if the disposal had been made for a consideration of such amount as would secure that neither a gain nor a loss would accrue to the authority¹⁶.

Any share¹⁷ issued by a company¹⁸ is to be treated for the purposes of the tax provisions relating to company distributions¹⁹ as if it had been issued wholly in consideration of a subscription paid to that company of an amount equal to the nominal value of the share²⁰. Any debenture issued by a company²¹ is to be treated for the purposes of the tax provisions relating to company distributions as if it had been issued: (1) wholly in consideration of a loan made to that company of an amount equal to the principal sum payable under the debenture²²; and (2) wholly and exclusively for the purposes of the trade carried on by that company²³.

1 For the meaning of 'liability' see PARA 763 note 3 ante.

2 For the meaning of 'functions' see PARA 763 note 4 ante.

3 For the meaning of 'relevant port authority' see PARA 763 note 1 ante.

4 Ie transferred under the Ports Act 1991 s 2: see PARA 764 ante.

5 Ie formed in pursuance of ibid s 1 (see PARA 763 ante).

6 Ie to be the successor company for the purposes of ibid Pt I (ss 1-20) (as amended). For the meaning of 'the successor company' see PARA 764 note 6 ante.

7 Ibid s 35(1). As to corporation tax generally see INCOME TAXATION.

8 Ie the transfer to a company under ibid s 2: see PARA 764 ante.

9 For the meaning of 'securities' see PARA 764 note 14 ante.

10 Ie issued or allotted in pursuance of the Ports Act 1991 s 3: see PARA 768 ante.

11 Ibid s 35(2).

12 Ie an allowable loss within the meaning of the Taxation of Chargeable Gains Act 1992: see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 9.

13 Ie apart from the Ports Act 1991 s 35(3) (as amended).

14 As to the meaning of 'former relevant port authority' see PARA 778 note 3 ante.

15 Ie levy under the Ports Act 1991 s 13(1): see PARA 778 ante.

16 Ibid s 35(3) (amended by the Taxation of Chargeable Gains Act 1992 s 290(1), Sch 10 para 24(5)).

17 For the meaning of 'shares' see PARA 763 note 2 ante.

18 Ie issued in pursuance of the Ports Act 1991 s 3: see PARA 768 ante.

19 'The tax provisions relating to company distributions' means the provisions of the Corporation Tax Acts, excluding any of those provisions relating to corporation tax on chargeable gains: Ports Act 1991 s 35(8). 'The Corporation Tax Acts' means the enactments relating to the taxation of the income and chargeable gains of

companies and of company distributions (including provisions relating to income tax): Interpretation Act 1978 s 5, Sch 1 (definition substituted by the Finance Act 1987 s 71, Sch 15 para 12).

20 Ports Act 1991 s 35(4).

21 It issued in pursuance of *ibid* s 3: see PARA 768 ante.

22 *Ibid* s 35(5)(a).

23 *Ibid* s 35(5)(b).

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PRIVATISATION OF CERTAIN PORT UNDERTAKINGS/(5) SUPPLEMENTARY PROVISIONS/789.
Stamp duty and stamp duty land tax.

789. Stamp duty and stamp duty land tax.

No transfer effected by the statutory provisions for the transfer of the undertakings of relevant port authorities¹ gives rise to any liability to stamp duty². A land transaction³ effected under those provisions is exempt from charge for the purposes of stamp duty land tax⁴.

1 It is the Ports Act 1991 Pt I (ss 1-20) (as amended). See, in particular, s 2(2); and PARA 764 ante. For the meaning of 'relevant port authority' see PARA 763 note 1 ante.

2 *Ibid* s 36(1). There is also an exemption from stamp duty in respect of schemes under s 22: see PARA 790 post.

3 'Land transaction' has the meaning given by the Finance Act 2003 s 43(1) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX): Ports Act 1991 s 36A(3) (s 36A added by the Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003, SI 2003/2867, reg 2, Schedule para 16).

4 Ports Act 1991 s 36A(1) (as added: see note 3 supra). Relief must be claimed in a land transaction return or an amendment of such a return: s 36A(2) (as so added). 'Land transaction return' has the meaning given by the Finance Act 2003 s 76(1) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX): Ports Act 1991 s 36A(3) (as so added). As to stamp duty land tax generally see STAMP DUTIES AND STAMP DUTY RESERVE TAX.

Halsbury's Laws of England/PORTS AND HARBOURS (VOLUME 36(1) (2007 REISSUE))/10.
PRIVATISATION OF CERTAIN PORT UNDERTAKINGS/(6) PORT OF TILBURY/790. Privatisation of the Port of Tilbury.

(6) PORT OF TILBURY

790. Privatisation of the Port of Tilbury.

The Port of London Authority¹ was empowered by the Ports Act 1991² to form a company³ for the purpose of carrying on: (1) that part of its undertaking which consisted in operating the port of Tilbury⁴; and (2) any activities which appeared to the authority to be incidental to or connected with operating the port of Tilbury⁵. In pursuance of this power, on 28 February 1992⁶, property⁷, rights, liabilities⁸ and functions⁹ of the authority relating to the port of Tilbury were transferred to Port of Tilbury London Ltd, a company which had been formed by the authority under the statutory powers¹⁰. The Ports Act 1991 provided for a transfer to be effected in accordance with a scheme submitted by the authority to the Secretary of State¹¹ and confirmed by him¹². Such a scheme was required to contain, inter alia, provision for the protection of

pension rights of or in respect of persons transferred from the employment of the authority to the company¹³.

Following this transfer the authority was empowered to provide for the disposal of securities of the company¹⁴. The disposal on 11 March 1992 by the authority, pursuant to this power, of the shares held by it in the company effected the privatisation of the port of Tilbury, but the term 'privatisation' is not used in the statutory provisions.

1 As to the Port of London Authority see PARAS 623-627 ante.

2 See the Ports Act 1991 Pt II (ss 21-30) (as amended).

3 Ie a company limited by shares and registered under the Companies Act 1985: Ports Act 1991 s 21(2). For the meaning of 'shares' see PARA 763 note 2 ante. As to companies generally see COMPANIES.

4 Ibid s 21(1)(a). 'The port of Tilbury' means the authority's docks and landing places at Tilbury in the borough of Thurrock in the county of Essex: s 30. 'Docks' means the docks and canals belonging to or administered by the authority, and includes locks, basins and cuts forming part of those docks or canals; and 'landing places' means wharves and other waterside landing places, jetties and similar installations, and includes approaches from land to such installations: Port of London Act 1968 s 2(1); definitions applied by the Ports Act 1991 s 30.

5 Ibid s 21(1)(b). Provision was made by the Ports Act 1991 for the Secretary of State to give a direction to the authority to form a company if, after the period of two years beginning with the date on which the Ports Act 1991 was passed (ie 25 July 1991), it had not done so: see s 27. As to the Secretary of State see PARA 603 ante. Provision was made for financial assistance to certain qualifying persons in relation to the transfer: see s 28.

6 See the Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992, SI 1992/284. The Secretary of State was empowered to make regulations for determining, for any time within the specified transitional period, the rateable value of a hereditament as regards which either the authority or the company was subject to a non-domestic rate in respect of a financial year falling within that period: see s 29 (repealed by the Local Government Act 2003 s 127(2), Sch 8 Pt 1); and the Non-Domestic Rating (Ports of London and Tilbury) Regulations 1991, SI 1991/2906.

7 Where any property transferred consisted of or comprised any work requiring a works licence (ie a licence granted under the Port of London Act 1968 s 66(1): see PARA 626 ante), a works licence to maintain and retain the work was to be regarded as having been granted by the authority to the company on the date on which the transfer took effect: see the Ports Act 1991 s 25.

8 For the meaning of 'liability' see PARA 763 note 3 ante.

9 For the meaning of 'functions' see PARA 763 note 4 ante.

10 See the Ports Act 1991 s 22; and the Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992, SI 1992/284. Provision is also made, in relation to the transfer under the Ports Act 1991 s 22, as to the division and apportionment of property (s 23(1), Sch 2 para 1), the identification of property, rights and liabilities (Sch 2 paras 2, 3), the right to production of documents of title (Sch 2 para 4), the proof of title by certificate (Sch 2 para 5), for the construction of agreements, statutory provisions and documents (Sch 2 paras 6-9), the transfer of rights and liabilities relating to employment (Sch 2 para 10), the effect on third parties of vesting provisions (Sch 2 para 11), and for the interpretation of statutory terms (Sch 2 para 12). Stamp duty was not chargeable on the scheme: see s 36(2)(a). Nor is it chargeable on any instrument certified by the authority as having been made or executed in pursuance of Sch 2 (see s 36(2)(b)), but such an instrument is not to be treated as duly stamped unless it is stamped with the duty to which it would be liable but for s 36(2), or it has, in accordance with the Stamp Act 1891 s 12 (as amended) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1111), been stamped with a particular stamp denoting that it is not chargeable with any duty or that it is duly stamped: see the Ports Act 1991 s 36(3).

11 See ibid ss 22(1)-(3), (7), 23.

12 See ibid s 22(4)-(6), (8), (9). The authority submitted to the Secretary of State the Port of Tilbury Transfer Scheme 1991, which was confirmed with modifications by the Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992, SI 1992/284. The scheme is set out in art 2(2).

13 See the Ports Act 1991 ss 23(2), 24.

14 See *ibid* s 26. For the meaning of 'securities' see PARA 764 note 14 ante. As to the provisions relating to corporation tax and taxation of company distributions see s 35 (as amended); and PARA 788 ante. See, in particular, s 35(6), (7) (s 35(6) amended by the Taxation of Chargeable Gains Act 1992 s 290(1), Sch 10 para 24(5)).

UPDATE

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NOTE 3--Reference to Companies Act 1985 is now to Companies Act 2006: Ports Act 1991 s 21(2) (amended by SI 2009/1941).

NOTES 10-12--Ports Act 1991 s 22 amended: SI 2009/1941.

